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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

CORPUS CHRISTI DIVISION

MARC VEASEY, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	CIVIL ACTION NO.
)	2:13-CV-193 (NGR)
RICK PERRY, et al.,)	
)	
Defendants)	

ORAL DEPOSITION

SENATOR ROBERT L. DUNCAN

AUGUST 28, 2014

ORAL DEPOSITION OF SENATOR ROBERT L. DUNCAN,
produced as a witness at the instance of the Plaintiffs,
and duly sworn, was taken in the above-styled and
numbered cause on August 28, 2014, from 9:04 a.m. to
5:34 p.m., by Susan Myatt, Certified Court Reporter for
the States of Texas and New Mexico, reported by
computerized stenotype machine at the Embassy Suites,
Executive Board Conference Room, 5215 South Loop 289,
Lubbock, Texas, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record or
attached hereto.

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1 (Witness sworn by court reporter.)

2 MR. GEAR: Senator Duncan, my name is Bruce
3 Gear. I am from the Department of Justice. I am here on
4 behalf of the United States in the current litigation. I
5 just wanted to start by going over some ground rules with
6 you regarding the deposition.

7 But, maybe before we do that, we can put on
8 the record what you want to put on the record.

9 MR. SWEETEN: Okay. And, Bruce, we had a
10 short discussion just before we went on the record.

11 Senator Duncan will be asserting legislative
12 privilege today. Pursuant to an order of the Court, we are
13 going to ask that the portions -- that the deposition be
14 kept under seal based upon the assertion of legislative
15 privilege.

16 At this point, it is not our intention to
17 instruct him not to answer on the basis of a legislative
18 privilege, but instead to provide the response -- yet
19 it's -- even though we will maintain the objection, you
20 know, as the deposition continues.

21 So I think that is a fair rendition of what
22 we have discussed and how we want to proceed, so -- and it's
23 my understanding there is no objection to putting the
24 deposition under seal; is that correct?

25 MR. GEAR: I think we've done that in the

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1 past, yes.

2 SENATOR ROBERT L. DUNCAN,
3 having been previously duly sworn by the court reporter,
4 testified on Examination by Mr. Gear, as follows:

5 Q And just a couple of points of clarification.
6 My understanding is that you are no longer a senator --

7 A That's correct.

8 Q -- for the State of Texas. And when did you
9 leave the Senate?

10 A July 3rd of this year, 2014.

11 MR. GEAR: So any discussions regarding
12 SB 14 after July 3rd would not be covered by legislative
13 privilege; am I correct on that?

14 MR. SWEETEN: I believe that to be the
15 case. I mean, I guess it could come up that if he were
16 expressing something that related to his mental
17 impressions that occurred during the process, that it
18 possibly could implicate legislative privilege.
19 Obviously, other privileges could be up for debate that
20 he discussed something.

21 These are clearly attorney-client
22 privilege. Other privileges could apply. But I think,
23 as a general matter, if he has had discussions after the
24 date of his service with other legislators, I don't think
25 that that would be covered by legislative privilege

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1 because he's not -- he wasn't a senator at the time.

2 MR. GEAR: All right. I just wanted to
3 make sure that was clear on the record.

4 MR. SWEETEN: Okay.

5 Q (By Mr. Gear:) So let me start with some ground
6 rules, Senator Duncan.

7 You understand that you have been sworn in
8 by the court reporter, and that you are expected to
9 testify truthfully, completely, and as accurately as you
10 can, correct?

11 A Correct.

12 Q And the court reporter today is taking a
13 transcript, and that means a number of things. I know
14 that you've been deposed previously, but if you'll allow
15 me to ask the complete question, I will give you a
16 complete opportunity to answer; do you understand?

17 A Yes.

18 Q And when I ask you a question, because she's
19 taking a written record, it's necessary for you to answer
20 "yes" or "no." Do you understand that?

21 A I do.

22 Q Or to give a complete answer, as you deem
23 necessary.

24 A Yes, sir.

25 Q So, if there's a time where I say, "Is that a

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1 'yes,'" "Is that a 'no,'" or "Could you explain that
2 further," it may be because you have nodded your head
3 instead of providing an answer on the record. Do you
4 understand that?

5 A Yes, sir.

6 Q So, hopefully, all of my questions will be
7 clear.

8 A I'm sure they will be.

9 Q If they are not clear at any point, you can ask
10 me to rephrase the question, you can ask me -- you can
11 basically say you didn't understand, and I will try to
12 rephrase it in a way that you understand it completely.
13 Do you understand that?

14 A Yes, sir.

15 Q If you wish to take a break, you know, I will
16 accommodate you on that. I will likely finish the line of
17 questioning that I'm going through, and at that point, if
18 you still want to take a break, I will allow you to do
19 that. Do you understand?

20 A Yes.

21 Q Is there any reason why you are unable to
22 testify truthfully today, such as have you taken any
23 medication which would affect your deposition testimony?

24 A No.

25 Q Have you had any alcohol within the last 24

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1 hours?

2 A No.

3 Q Do you understand the instructions that I have
4 stated to you? If you have any questions, I would be
5 happy to try to answer those. Do you understand?

6 A Fine.

7 Q So, during the course of this deposition, I may
8 ask -- I may state the word "photo ID" or "voter ID." Do
9 you understand that I am using those interchangeably for
10 the purpose of this deposition?

11 A Yes.

12 Q And that depending on the particular legislation
13 we are talking about, it may include both photo and
14 non-photo ID; do you understand that?

15 A I am sure you will delineate what you are
16 talking about --

17 Q I will.

18 A -- as you go through the questions.

19 Q I will.

20 A Okay.

21 Q And, again, do you have any questions about the
22 instructions that I have laid out for you today?

23 A No.

24 Q Now, you have testified previously in Texas v.
25 Holder, correct?

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1 A Yes, sir.

2 (Duncan Deposition Exhibit Number RD-1
3 marked.)

4 Q (By Mr. Gear:) And I am just going to show you
5 what's marked as RD-1, and I will give you a copy also, if
6 you would like it. I would just ask you to identify that
7 document for me, please.

8 A It appears to be the transcript of the oral
9 deposition of Robert Duncan, as you have previously
10 described.

11 Q And although it's very small print, is it
12 accurate that you have previously testified in Texas v.
13 Holder on June 7th, 2012?

14 A Yes, sir.

15 Q And I just want to you ask generally: Is there
16 anything within your previous deposition testimony related
17 to Texas v. Holder that you believed was incorrect?

18 MR. SWEETEN: Objection; compound. You
19 can answer.

20 A I think that -- I can't remember if I signed
21 this or not. I'm sure I did. I don't know if you-all
22 had my signature on it.

23 MR. SWEETEN: I don't know if it has the
24 errata on it or not.

25 MR. GEAR: I don't think it did.

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1 A I don't think -- I don't recall if there were
2 any errors. I think I had forgotten a couple of things I
3 was reminded of. Those were all cleared up, corrected in
4 the deposition.

5 Q (By Mr. Gear:) Thank you.

6 A I think it's fine.

7 Q Thank you. And did you review this deposition
8 after you provided the deposition testimony --

9 A Yes, sir.

10 Q -- as written? And that was a "yes"?

11 A Yes, sir. Sorry. I overrode you there a
12 little bit.

13 Q That's okay. And that is just another point
14 that I will raise regarding the deposition. As I'm
15 speaking, allow me to complete the question --

16 A You bet.

17 Q -- and, again, I will allow you to complete your
18 answer.

19 So one last question on the deposition. I
20 believe you've testified that there was nothing in here
21 that you believed was inaccurate, so let me put that in
22 the positive.

23 Do you believe that your testimony on
24 June 7th, 2012, was accurate?

25 MR. SWEETEN: Objection; compound. Go

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1 ahead.

2 A I believe it was accurate, to the best of my
3 memory, yes.

4 Q (By Mr. Gear:) So I believe, while we were off
5 the record, I asked you whether you were still a senator
6 in the State of Texas, and how did you answer that?

7 A I resigned as of July the 3rd, 2014.

8 Q And as of July 3rd, 2014, did you take up any
9 other position within the State?

10 A Well, I am now the Chancellor for the Texas
11 Tech University system.

12 Q And you began that position on what date?

13 A July the 7th, 2014.

14 Q So you got very little vacation time in between,
15 right?

16 A None at all.

17 Q Let me ask you a few questions regarding your
18 preparation for this deposition.

19 Did you read your previous deposition
20 testimony prior to coming in for this deposition?

21 A Yes, sir.

22 Q Did you review any other documentation prior to
23 coming in for this deposition today?

24 A I reviewed the exhibits that were attached to
25 the deposition and a couple of other documents that

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1 Mr. Sweeten showed me this morning.

2 Q And regarding the couple of other documents, can
3 you describe those documents for me?

4 A I think one set was some notes that appeared to
5 be taken from handwritten notes that appeared to be --
6 were not in my handwriting. So I don't know what they
7 said. I didn't read them, other than just to determine
8 whether or not I wrote them.

9 There was a spreadsheet that we -- I am
10 not sure exactly where the source of that was. And
11 then there was an e-mail that my staff sent out to a
12 different -- or to my district staff.

13 And that's about it. That's all I
14 remember on that.

15 Q Can you tell me, related to the spreadsheet,
16 what that -- what the subject matter of that spreadsheet
17 is?

18 A I really don't know. Mr. Sweeten had asked me
19 if I had ever seen it or had seen it.

20 MR. SWEETEN: Yeah. Don't reveal any
21 communications that you and I had.

22 A I don't know what it -- I do not know what
23 it -- what it is or how it -- how it was prepared.

24 Q (By Mr. Gear:) And I should have asked you this
25 question before we got into any detail. Are you

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1 represented today?

2 A Yes.

3 Q And who are you represented by?

4 A Mr. Sweeten with the Attorney General's Office.

5 Q And as I ask you questions, I just want to
6 clarify that I am not asking you to reveal specific
7 conversations with your attorney. I will do my best to
8 understand who was present during the discussions so that
9 we can speak appropriately.

10 But if there is a time where your -- you
11 had a discussion with your attorney, then you can let me
12 know that, and I will attempt to avoid those types of
13 questions. Do you understand?

14 A Yes, sir.

15 Q So you also discussed that you reviewed an
16 e-mail to your district staff. Can you tell me what the
17 subject matter of that e-mail was?

18 A I think it was just basically information
19 concerning what was happening with regard to the process
20 for the voter ID legislation.

21 Q Was it in regard to any particular piece of
22 photo ID legislation?

23 A Well, I don't remember if it was 2009 or
24 2000 -- probably 2011.

25 Q Do you know if you produced that particular

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1 document to your attorney, or do you know how --

2 MR. GEAR: Strike that.

3 Q (By Mr. Gear:) Do you know if you produced that
4 particular document to your attorney?

5 A I am sure we did.

6 Q And regarding production of documents, did you
7 produce personal and work-related e-mails that deal with
8 photo ID legislation?

9 A We --

10 MR. SWEETEN: I may need to -- we have
11 obviously -- as I understand, as sort of the arc of this
12 case, we produced -- as you know, Bruce, we have
13 produced, on behalf of Senator Duncan, documents in the
14 2012 litigation. That was reproduced in this case, as I
15 understand it.

16 And then I think, in addition, this Court
17 has, you know, required certain documents -- additional
18 documents from all the legislators that were subject to
19 legislative privilege, and I think those were all
20 produced.

21 So I think the answer -- I mean, he is
22 not under -- this isn't a subpoena duces tecum as to
23 this Notice of Deposition.

24 MR. GEAR: That is correct.

25 MR. SWEETEN: There is not an additional

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1 request, but I think that is -- having not been involved
2 in the production in the second case at all, I think
3 that is a rendition of kind of how -- the documents that
4 he has produced on this.

5 Q (By Mr. Gear:) So I still want to go into the
6 types of documents that you produced.

7 Do you recall producing personal e-mails
8 or work-related e-mails related to photo ID legislation?

9 A We have produced everything that was requested
10 of us by the Secretary -- by whatever document, in
11 accordance with the Secretary of State's instructions, I
12 think -- or not the Secretary of State, but the Secretary
13 of the Senate, if I recall. I am not sure. I didn't
14 personally do that.

15 It was a process that I think -- I am
16 sure, like many other offices, we get requests like that
17 all the time, and so we have a process for putting that
18 information together and getting it to the proper
19 authorities, in accordance with the Attorney General's
20 instructions, as well as the Secretary of the Senate
21 sometimes gets involved in the Freedom of Information
22 Act or the Open Records Act, documents that are
23 frequently requested in our offices.

24 Q So, if I understood your testimony correctly, it
25 was the Secretary of the Senate that made a document

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1 request of your office?

2 A I don't know. I can't tell you, because it was
3 handled by my staff.

4 Q Okay.

5 A I am just giving you a general -- an estimate
6 or general idea of how that normally works.

7 Q Do you recall when that request was made?

8 A No.

9 Q Do you recall who on your staff searched for
10 those documents?

11 A I would imagine that it was Jennifer Fagan
12 who -- to the best of my knowledge, it would be Jennifer
13 Fagan, who was the Committee Director for State Affairs,
14 and then perhaps my Chief of Staff, for anything that we
15 might have had in the office, in the Senate office.

16 Q And who on your staff worked on photo ID
17 legislation?

18 A Jennifer Fagan was the director of the
19 committee -- or the State Affairs Committee, and she was
20 primarily the staff person in charge of that.

21 Q And as the director of the State Affairs
22 Committee, can you tell me what her responsibilities were?

23 A Well, she basically made sure that -- she was
24 in charge of making sure that the process that we have in
25 our committee for scheduling bills, vetting bills, and

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1 researching bills, she made sure those things were done
2 and often. She is an attorney as well, and she provided
3 some analysis, as well, on different types of things in
4 the committee. That would be her general role.

5 We had different staff persons who would
6 do things as well.

7 Q And can you tell me the time period in which
8 Jennifer Fagan worked for you?

9 A I think she started working for us in the
10 committee -- she always worked in the committee for -- in
11 jurisprudence in 2003.

12 And then, when we were named Chair of the
13 State Affairs Committee in 2004, I think she was then
14 General Counsel, and then later promoted to director of
15 the committee.

16 Q So, by 2005, was she the director of the State
17 Affairs Committee?

18 A I think so, but I don't know for sure. I think
19 she was. I don't know about 2005. I think Lizzie
20 Coffman was by that point in time, but when Lizzie left,
21 we promoted Jennifer to director at that point.

22 Q So between --

23 A But I don't remember when that was. I can't
24 remember.

25 Q So, between 2005 and 2011, was it Jennifer Fagan

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1 that handled photo ID legislation issues for you?

2 A Most likely.

3 Q Would there have been anyone else specifically
4 tasked to handle photo ID legislation?

5 A Other than -- no, just -- I mean, as far as the
6 specific issues, she may have had -- she may have
7 assigned tasks to others, but she was the one primarily
8 in charge of that.

9 Q And so, during the legislative session, how did
10 you communicate with Jennifer Fagan?

11 A She would come to my office.

12 Q How often would she come to your office?

13 A Daily. Or I would go over to the State Affairs
14 Office, you know, but we communicated in person.

15 Q So, other than meeting with you daily, would you
16 communicate by e-mail?

17 A No.

18 Q Would you communicate by text messaging?

19 A No.

20 Q Telephone?

21 A You know, maybe, if there were -- if there was
22 a quick question, but, you know, you're not by a phone
23 very much when you are in legislative session, quite
24 frankly. It's hard to communicate by phone, so we always
25 had daily meetings.

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1 Q Would you -- During your daily meetings, would
2 you reduce the subject matter of the meetings to writing?

3 A Not -- I didn't, and I don't think she did
4 either.

5 Q So I want to turn to 2007 and ask you: Do you
6 recall that HB 218 photo ID legislation passed from the
7 House and was received by the Senate?

8 A Yes.

9 Q And did you follow the progress of HB 218
10 through the House?

11 A Probably not.

12 Q Would you have had any of your staff members
13 follow the progress of HB 218 through the House?

14 A Probably not.

15 (Duncan Deposition Exhibit Number RD-2
16 marked.)

17 Q (By Mr. Gear:) I am going to show you what has
18 been previously marked as Duncan Exhibit 523. I would
19 just ask you to take a look at this, and we will discuss
20 it.

21 A (Witness reviewing document.)

22 Q Do you recognize this document?

23 A Yes.

24 Q And what is this document?

25 A This is a legislative history or a procedural

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1 history or calendar or timeline showing action taken on
2 House Bill 218.

3 Q And that would have been the 80th Legislative
4 Session?

5 A Yes, sir, regular session.

6 Q And do you see the e-mail address up in the
7 right-hand corner?

8 A No -- oh, right up here?

9 Q Yes, top right-hand corner. I'm sorry.

10 A Right. Yes, sir.

11 Q And do you recognize that e-mail address?

12 A Capitol.state.tx.us/BillLookup. Yeah, not
13 really, but, you know, I mean, it's -- it looks like it's
14 something that was e-mailed to somebody, or from, or
15 somebody went to a service and got it.

16 Q Do you recognize the capitol.state.tx.us as
17 being the Senate's website?

18 A It's the Capitol's website. I don't know if
19 it's the Senate's website.

20 Q And is it fair to say that the Texas Legislature
21 Online History is a detailed representation of what
22 occurred in the House and the Senate regarding HB 218?

23 A It's simply a record of action taken on the
24 bill as it moves through the process.

25 Q And do you have any reason to dispute that the

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1 Texas Legislature Online History for HB 218 is inaccurate?

2 A No.

3 Q So, just to put the bill into context, if you
4 look at what has been Bates-stamped as USA 00033653, which
5 is the last page of this document, can you tell me the
6 date that HB 218 was filed?

7 A Well, according to this document, it was filed
8 on November the 14th of 2006.

9 Q In looking at Exhibit 2, can you tell me when it
10 was actually received by the Senate?

11 A It was received on April 25th of 2007,
12 according to the document.

13 Q It also appears that there was a first-time read
14 in the Senate on April 26th, 2007?

15 A Correct.

16 Q And it was then referred to the State Affairs;
17 do you see that?

18 A Yes, sir.

19 Q And that would have been April 26th, 2007?

20 A Yes, sir.

21 Q And during the consideration of HB 218, did you
22 hold any chairs within the Senate?

23 A Yes. I was Chairman of the State Affairs.

24 Q And prior to HB 218 being referred to the Senate
25 or being received by the Senate, were you involved in any

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1 communications regarding HB 218 with House
2 representatives?

3 A I don't remember if I was. During that period
4 of the session, if I was, it was -- they came over to
5 the -- you know, it would have been a very informal
6 conversation, but I don't recall any.

7 Q Do you recall the names of any House
8 representatives that you may have spoken to?

9 A No.

10 Q Do you recall who --

11 MR. GEAR: Strike that.

12 Q (By Mr. Gear:) When HB 218 came over from the
13 House, do you recall who sponsored HB 218?

14 A No. I would have to look. It seemed like,
15 reading the deposition, I recall maybe it was Rick or
16 Betty, Betty Brown. I think Betty Brown is the --
17 according to this document, Betty Brown was the primary
18 author in the House.

19 Q And does this document refresh your recollection
20 on that?

21 A Well, I would rely on the document. And I
22 don't have any reason to doubt it.

23 Q So, just to be clear, Betty Brown was the author
24 of HB 218, correct?

25 A That is what this document reflects.

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1 Q And Senator Fraser was the sponsor of HB 218 in
2 the Senate?

3 A That is what this reflects, and I recall that.
4 Yes, sir.

5 Q And do you recall any discussions with any
6 senators regarding your being the sponsor of HB 218?

7 A No.

8 Q Did you consider sponsoring HB 218?

9 A Probably not.

10 MR. SWEETEN: Objection; privileged.
11 Let's say privilege on that, and you can answer.

12 A Probably not.

13 Q (By Mr. Gear:) And when you say "probably not,"
14 what do you mean?

15 A Well, I probably didn't consider it. I didn't
16 generally do that. Sometimes I did, but not generally.

17 It was not a -- It was not a general
18 political decision -- or political tact that I would use
19 or do. A lot of people do, and sometimes you do, but I
20 just typically don't sign onto something unless I am a
21 primary sponsor. I do sometimes in joint authors, but,
22 typically, I don't just for the sake of it.

23 Q So, just for the sake of clarity on the record,
24 when you say "political tact," what do you mean?

25 A Well, I mean, some people want to have their

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1 name on the bill. I mean, it's important that they are
2 active, and they want to be able to reflect publicly that
3 they are in support of certain concepts, and they do
4 that, but --

5 Q So did you support HB 218?

6 A I believe I voted for it.

7 Q So that would be a "yes"?

8 A Yes, sir.

9 Q Do you recall being involved in any discussions
10 or communications with any legislator regarding the types
11 of ID that would be included in HB 218?

12 A Do I have independent recollection of that?
13 No.

14 Q Is it possible that you engaged in that type of
15 discussion?

16 A The record would reflect that, and I think it
17 probably does.

18 Q And as you sit here today, what, if any, memory
19 do you have regarding what that record may reflect?

20 A Well, as chairman of the committee, you lay
21 out -- you recognize the layout of the bill, and you
22 engage in the discussion, and I am sure that I did on
23 this one.

24 Q And, again, so I am clear on your testimony,
25 prior to HB 218 coming -- being received by the Senate,

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1 were you engaged in any communication regarding the types
2 of ID that would be included in HB 218?

3 A I have no independent recollection of informal
4 conversations about that. If there are conversations
5 about that, it would be in the record.

6 Q And, again, is it possible that you engaged in
7 those types of communications?

8 A Anything is possible.

9 MR. SWEETEN: Object to speculation.

10 (Duncan Deposition Exhibit Number RD-3
11 marked.)

12 Q (By Mr. Gear:) So I'm showing you what's been
13 previously marked as Duncan Exhibit 28, and I will give
14 you a chance to take a look at that briefly. Let me know
15 when you're ready.

16 A (Witness reviewing document.) I'm ready.

17 Q Do you recognize this document?

18 A Yes, sir.

19 Q And what is this document?

20 A This is House Bill 218.

21 Q And do you recall testifying to this during your
22 previous deposition testimony?

23 A I recall, from reading the record yesterday,
24 that this was brought up and attached as an exhibit.

25 Q And this is a --

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1 MR. GEAR: For the record, this is marked
2 as USA 00033583.

3 Q (By Mr. Gear:) Do you see that on the bottom
4 firsthand -- bottom right corner of this document?

5 A Yes, sir.

6 MR. GEAR: And, again, for the record,
7 this was previously marked as Duncan Exhibit 28, and it
8 is now marked as RD-3 for Robert Duncan.

9 Q (By Mr. Gear:) Sir, I want to direct your
10 attention to Page 9, specifically Section 63.0101. Do you
11 see that?

12 A Yes, sir.

13 Q Is it accurate to say that HB 218 would have
14 allowed a driver's license or personal identification card
15 issued to the person by the Department of Public Safety
16 that is not expired or that has expired no earlier than
17 two years before the date of presentation?

18 A That is the language on Line 17 through 20, I
19 believe.

20 Q And do you recall HB 218 allowing that type of
21 documentation?

22 A That is what it -- it appears in the bill; yes.

23 Q Okay. And if it appears in the bill, you
24 believe that that language would be accurate?

25 A I'm not sure I understand. It's the

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1 language -- you know, I'm reading it. It's in the bill.

2 It says it's in House Bill 218, and it says what it says.

3 Q And House Bill 218, under Section 63.0101,
4 Number 2, also would have allowed for a United States
5 military identification card that contains the person's
6 photograph, correct?

7 A Correct.

8 Q Number 3, it would have allowed a valid employee
9 identification card that contains the person's photograph,
10 is issued by an employer of the person in the ordinary
11 course of the employer's business, correct?

12 A Yes, sir.

13 Q It would have allowed a United States
14 citizenship certificate issued by -- to the person that
15 contains the person's photograph, correct?

16 A Yes, sir.

17 Q It would have also allowed a United States
18 passport issued to the person? And, again, I'm
19 referencing HB 218.

20 A Well, I think the current law allowed that,
21 apparently.

22 Q And HB 218 would have also allowed that,
23 correct?

24 A Right.

25 Q It would have allowed a student identification

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1 card issued by a public or private institution of higher
2 education located in the United States that contains the
3 person's photograph, correct?

4 A Yes, sir.

5 Q It would have also allowed a license to carry a
6 concealed handgun issued to the person by the Department
7 of Public Safety or, as Number 8 indicates, a valid
8 identification card that contains the person's photograph
9 and is issued by an agency or institution of the Federal
10 Government. Do you see that?

11 A Yes, sir.

12 Q Or an agency, institution, or political
13 subdivision of the State. Do you see that?

14 A Yes, sir.

15 Q Is it also accurate to say that HB 218 would
16 have allowed a number of non-photo identifications?

17 A Yes, sir.

18 Q And I believe your previous testimony was that
19 you voted in favor of HB 218, correct?

20 A Yes, sir.

21 Q And in voting in favor of HB 218, you also voted
22 in favor of the employee ID with photo?

23 A I voted in favor of the language that was in
24 House Bill 218.

25 Q And that is the language that we've just

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1 discussed previously, correct?

2 A I would just rely on the language in the bill,
3 because that is what I voted for.

4 Q And you voted in favor of the language that was
5 included in the provisions of HB 218, correct?

6 A Yes, sir.

7 Q And, again, that would have included the use of
8 a student photo ID card issued by a public or private
9 institution of higher education in the U.S. that contains
10 a photo ID, correct?

11 MR. SWEETEN: Objection; asked and
12 answered. You can answer.

13 A If that is the direct language out of the bill
14 that you are reading, yes. I voted for the provisions of
15 House Bill 218.

16 Q (By Mr. Gear:) Can you tell me what the
17 publicly stated legislative purpose of HB 218 was?

18 MR. SWEETEN: Objection; vague, as it's
19 publicly stated. I'm not sure whose public statement
20 you're asking about. You can answer.

21 Q (By Mr. Gear:) Let me --

22 A There were 31 different public statements about
23 it, so, you know, it would be difficult. I'm sure
24 everybody had their own public statement about it. I
25 think the -- so I don't really know how to answer that

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1 question accurately.

2 Q So, when you say there were 31 different public
3 statements, do you recall the public statement made by
4 Representative Brown regarding HB 218?

5 A No, sir, I do not.

6 Q Did you -- At any point, did you review the
7 legislative record regarding the purpose of HB 218?

8 A No, sir, I really didn't. Or at least I don't
9 recall that I would have reviewed the House -- anything
10 that came out of the House necessarily. Sometimes we do.

11 But this was in, what, 2006? So there
12 has been a lot of legislation I've looked at since then,
13 including a lot of voter ID issues as well, as we have
14 gone through 2009 and 2011. So I don't have specific
15 recollection back that far as to what people said or who
16 I talked to specifically.

17 The record would reflect -- The only
18 thing that I can tell you is that the record would
19 reflect what public statements were made by persons as
20 this bill worked its way through the process.

21 Q And would there be any reason for you to dispute
22 what is contained within the legislative public record?

23 A You know, I don't have any knowledge to dispute
24 or not dispute it. I just don't know what it is. And I
25 haven't, you know, gone through and looked at everything,

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1 I guess, on the public record --

2 Q So, if I was to tell you that Representative
3 Brown indicated that the intent of HB 218 was to prevent
4 illegal and noncitizen citizens from voting, would you
5 have any reason to dispute that?

6 A I don't know whether she said that or not.

7 Q Would you have any reason to dispute it, if it
8 was a public record?

9 MR. SWEETEN: Objection; foundation.
10 Objection; calls for speculation. You can answer.

11 A I haven't seen it in the public record, so I
12 don't know. You know, I don't know if she disputes it.
13 So I would have no way of accurately giving you a
14 response to that question.

15 Q (By Mr. Gear:) Well, let's look at the public
16 record real quick.

17 (Duncan Deposition Exhibit Number RD-4
18 marked.)

19 Q (By Mr. Gear:) I am showing you what has been
20 marked as RD-4, and I would just ask you to identify this
21 document.

22 MR. GEAR: And for the record, this is an
23 excerpt. It's not the complete legislative record.

24 MR. SWEETEN: Yes, sir.

25 A (Witness reviewing document.) Okay.

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1 Q (By Mr. Gear:) Okay.

2 A So that -- I'm not answering your question, but
3 I've finished reading it.

4 Q Sure.

5 A So you might repeat your question. I'm sorry.

6 Q So let's identify this document for the record.
7 Can you tell me what this is?

8 A Well, it's a document that you have handed me
9 that is entitled "Texas House of Representatives
10 Committee on Elections, February 28, 2007, Excerpt of
11 Hearing Regarding House Bill" -- there's several bills,
12 but including House Bill 218.

13 Q And on the bottom middle, it's identified as
14 JA 007340. Do you see that?

15 A Yes, sir. Yes, sir.

16 Q It's also Bates-stamped TX 00205011?

17 A Correct.

18 Q And also Bates-stamped USA 00022222, correct?

19 A Yes, sir.

20 Q And I would just direct your attention to
21 Page 57 at the bottom. And to be clear --

22 A Fifty-seven --

23 Q Actually, I'm sorry.

24 A Which are you talking about?

25 Q Turn to Page --

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1 A The transcript, Page --

2 Q Yes. Turn to Page 56, please. I'm sorry.

3 A Okay.

4 Q On Page 56, do you see that there is a
5 discussion between Chairman Berman and Representative
6 Brown?

7 A Yes, sir.

8 Q And do you see that Representative Brown asks a
9 question of -- I'm sorry -- Representative Berman asks the
10 question of Representative Brown. Do you see that?

11 A I do.

12 Q And do you see, at the bottom of Page 56, where
13 Representative Brown begins to answer Representative
14 Berman's question?

15 A Yes, sir.

16 Q And turning to Page 57, bottom paragraph, do you
17 see where it says, "The government requires voters to
18 register before receiving a ballot. Therefore, verifying
19 the information they provided on their registration
20 application is not a measure designed to prevent any
21 citizen from voting"? Do you see that?

22 A That is what the language -- That is what the
23 transcript says; yes, sir.

24 Q And do you see where Representative Brown
25 states, during the Texas House of Representatives

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1 Committee on Elections, February 28, 2007, that HB 218 is
2 intended as a "measure designed to keep illegal aliens,
3 noncitizens, and people otherwise not qualified from
4 voting and diluting legitimate votes cast by citizens"?
5 Do you see that?

6 A That is what the transcript reflects.

7 Q And do you have any reason to dispute the
8 accuracy of this transcript from the House?

9 A I have no basis to dispute or not dispute it.

10 Q Turning to the Senate, do you recall any
11 discussion in the Senate regarding HB 218 that -- where
12 constituents expressed concerns regarding noncitizens
13 voting?

14 A I do not have independent specific recollection
15 of any testimony or statements. The record would reflect
16 that we had a hearing. So the record would reflect those
17 citizens and constituents who actually testified at the
18 hearing.

19 And so I don't have specific recollection
20 back to 2007 about what we heard at that point in time
21 in April, I guess, or May -- I guess it was in April of
22 2007.

23 Q Let me ask you specifically regarding
24 constituent mail that you may have received. Do you
25 recall receiving constituent mail that expressed concerns

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1 about illegal aliens or noncitizens voting?

2 MR. SWEETEN: 2007, you're asking?

3 MR. GEAR: In 2007.

4 A I don't recall receiving that.

5 Q (By Mr. Gear:) And let me expand that question.

6 Do you recall receiving constituent mail
7 regarding constituents expressing concerns that
8 noncitizens or illegal aliens were voting at any time
9 related to the photo ID legislation?

10 A No, sir, I really don't. I just really don't
11 remember that.

12 Q Do you recall senators discussing the concern
13 that noncitizens or illegal aliens may be voting in the
14 State of Texas?

15 A I have no independent recollection of that
16 specific discussion. It would have to be in the record.
17 I don't have an independent recollection of that.

18 Q Do you recall if there is a --

19 A Are you talking about in 2007?

20 Q I am talking about in 2007.

21 A Yeah. I don't have any recollection of that.

22 Q Do you recall having any communications with
23 Senator Fraser regarding illegal aliens or noncitizens
24 voting at the polls?

25 MR. SWEETEN: Objection; legislative

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1 privilege. Go ahead.

2 A No, sir.

3 Q (By Mr. Gear:) Do you recall having any
4 discussions with the Lieutenant Governor or the Governor
5 regarding illegal aliens and noncitizens voting?

6 MR. SWEETEN: Objection; legislative
7 privilege.

8 A No, sir.

9 Q (By Mr. Gear:) And just so we are clear, you
10 are --

11 MR. SWEETEN: Do you want to give me a
12 running -- go ahead. What were you going to say? I
13 interrupted.

14 MR. GEAR: Just so we are clear, I thought
15 we had put on the record that you would be asserting
16 legislative privilege and asking that it be maintained
17 under seal. I am not sure how we would actually do that.

18 MR. SWEETEN: Yeah. All -- As I
19 understand the Court's order, they're saying --
20 suggesting that we assert it, and then he can go ahead
21 and testify with respect to the legislatively privileged
22 matter.

23 So, when I'm making the objection to
24 legislative privilege, I am letting him answer,
25 obviously, and so -- and as part of -- because we believe

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1 that information is legislatively privileged. And I
2 think you've also said that this has been done throughout
3 the case.

4 But we are asking that it be maintained
5 under seal, the deposition. I think we have agreed to
6 that early in the deposition, because we are discussing
7 what we believe to be legislatively privileged matters.
8 I think that is --

9 MR. GEAR: That's the Court's --

10 MR. SWEETEN: -- at the point where I will
11 object to legislative privilege.

12 MR. GEAR: Yes.

13 MR. SWEETEN: I think, yes, with respect
14 to any matter where legislative privilege is asserted, we
15 want, obviously, that material to be kept under seal. I
16 also understood you to say this entire deposition, the
17 way it has been done, is that it has been kept under
18 seal. Is that not accurate?

19 MR. GEAR: Well, I think you are objecting
20 a little bit differently. So I want to make sure the
21 record is clear.

22 Essentially, in other depositions that I
23 have participated in, they have asserted the legislative
24 privilege and then agreed to not waive legislative
25 privilege, but maintain the deposition under seal. And

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1 the legislative privilege objection wasn't asserted each
2 and every time.

3 MR. SWEETEN: Okay. Well, I'm fine. I
4 mean, Bruce, if you will give me a running objection on
5 legislative privilege as to all, you know, matters that
6 you are going to be discussing with respect to 2007 to
7 2011, I do not need to keep asserting legislative
8 privilege as to each question.

9 Where I don't want to be in a situation is
10 where I haven't asserted it or where there is some
11 argument that I haven't asserted it. So I guess we can
12 do it one of two ways.

13 Either I'll keep just making the
14 assertions, again, letting him answer the question with
15 my objection, or if you will give me a running objection
16 between, you know, now and through the discussion of
17 legislative privilege -- I assume we are going to go
18 through '09 and '11 -- and then we can do it either way.
19 It's, you know, whatever, you are comfortable with.

20 I just don't want to be in a situation
21 where it's argued that I didn't assert legislative
22 privilege. So that's why I am having to maintain the
23 objection.

24 MR. GEAR: And would you agree that
25 legislative privilege is not -- the assertion of

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1 legislative privilege is not appropriate when dealing
2 with issues of constituents or interest groups?

3 MR. SWEETEN: Well, I don't know that that
4 is -- I don't know that that is the case.

5 If you are talking about now his
6 discussions with constituent communications, I think
7 there is the argument -- we argue certainly, you and I,
8 back and forth, as to the D.C. Court as to whether
9 constituent communications would be covered by that.

10 So I would assert legislative privilege as
11 to constituent communications as well.

12 MR. GEAR: And I would say that that's an
13 improper assertion. I understand your position, and so
14 we can just move forward. So I wouldn't give you just a
15 running objection --

16 MR. SWEETEN: Okay. I will just assert
17 it. I will just assert it when appropriate. Again, I am
18 not trying to be an obstructionist, but I have got to
19 maintain the record so that it is clear where we are
20 asserting it, in the absence of a running objection,
21 so --

22 Q (By Mr. Gear:) So we were -- we were discussing
23 constituent mail, and I believe your testimony was that
24 you don't have any independent recollection of receiving
25 constituent mail regarding constituents who may have

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1 expressed concern that illegal aliens or noncitizens were
2 voting. Is that a fair representation?

3 A I think that is a fair representation.

4 Q Do you have any recollection as to whether your
5 staff would have received any type of constituent mail
6 along those lines?

7 A I do not.

8 Q Who would be responsible in your office for
9 responding to constituent mail?

10 A 2007, it would be various members of the staff
11 they spread that responsibility on.

12 Q Would Jennifer Fagan be responsible for
13 responding to constituent mail?

14 A Probably not.

15 Q And do you recall the name of the staff member
16 who would be responsible for that?

17 A In 2007? Probably not. I mean, there's
18 several. It wouldn't be just one person. There would be
19 several persons who respond with the processes that are
20 available to us.

21 Q Do you recall what --

22 MR. GEAR: Strike that.

23 Q (By Mr. Gear:) Do you recall that HB 218 was
24 intended to address voter fraud?

25 A I recall the integrity of the ballot box was

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1 one of the major issues and reasons stated for House Bill
2 218 and other bills that came up later in other sessions.

3 Q Anything else that you recall related to voter
4 fraud regarding 2007 HB 218?

5 MR. SWEETEN: Objection; vague. Go ahead.

6 Q (By Mr. Gear:) Let me clarify that.

7 A You know --

8 Q Let me clarify that. I'm sorry. Any other
9 types of fraud that you recall on the legislative record
10 that relate to HB 218 that were discussed?

11 A Well, generally, what I have said. I think the
12 record, especially going back to 2007, would be the best
13 recollection I would have. And I would not want to
14 venture or be inaccurate about what was said or what I
15 perceived back in 2007, you know, in 2014. I just --
16 It's just not -- It's not a -- It's not realistic that I
17 could be accurate in that.

18 Q Well, let me explore that for a second. Would
19 you agree that HB 218 did not address the issue of by-mail
20 ballot fraud?

21 A I don't know.

22 Q And, again, it's your testimony that that would
23 be contained within the public record?

24 A If I understand your question correctly, I
25 don't know whether House Bill 218, without looking at it,

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1 dealt with voter mail fraud. I don't know. I know those
2 were issues that were more generally discussed a lot of
3 times and dealt with -- you know, I think with different
4 legislation throughout the years.

5 But, in particular, I don't know whether
6 or not House Bill 218 dealt with it or not, without
7 looking at it.

8 Q Fair enough. You have HB 218 in front of you,
9 the House bill?

10 A Somewhere here, yes, sir.

11 Q And that has been marked as RD-2, correct --

12 A 3.

13 Q -- or RD-3, correct?

14 A Correct.

15 Q In looking at House Bill 218, do you see any
16 provision within the bill that would address the issue of
17 by-mail ballot fraud?

18 MR. SWEETEN: Object to the extent the
19 question would call for legislative privilege in the
20 answer.

21 A (Witness reviewing document.) You know, a brief
22 45-second reading tells me that I don't see anything
23 about mail fraud, but -- wait. I'm not through yet.

24 Q (By Mr. Gear:) And I will give you a chance to
25 complete it.

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1 A Wait a minute. There is something here. No.
2 I'm sorry. There is not. It doesn't appear -- I mean,
3 it's 12 pages here.

4 I'm looking at it, and I don't see -- if
5 there is something in here, you might point it out to
6 me, because I don't see it in the quick reading.

7 Q If I were to tell you that there is nothing in
8 there that addresses the issue of by-mail ballots
9 generally or by-mail ballot fraud, would you have any
10 reason to dispute that?

11 A No, sir.

12 Q And, again, looking at RD-3, which is again
13 Bates-stamped as USA 00033583, is it fair to say that HB
14 218 deals specifically with in-person voting at the
15 polling place?

16 A The caption said, "related to requiring a voter
17 to present proof of identification," so -- and then I
18 think that language in there deals with in-person voting;
19 yes, sir.

20 Q Looking at the language, do you see any
21 provisions that would deal with anything else other than
22 in-person voting?

23 A Again, I am -- you know, a brief read of this
24 would indicate that you're correct; that there is nothing
25 in here other than in-person voting -- or nothing

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1 addressed in this bill other than in-person voting.

2 Q Are you aware of any communication with the
3 Senate regarding an analysis conducted to determine if
4 noncitizens or illegal aliens were voting at the polls
5 related to HB 218, the 2007 bill?

6 A I don't recall whether or not there was.

7 Q So HB 218 was referred to the --

8 A Senate State Affairs.

9 Q -- Senate State Affairs Committee?

10 A Yes, sir.

11 Q And you were the chair of that committee?

12 A Yes, sir.

13 Q Why did -- Why was HB 218 referred to the
14 committee that you chaired?

15 A Well, you know, the Lieutenant Governor has the
16 discretion to do that, but, generally, our committee
17 handled all election matters, among a lot of other
18 things. But, generally, the election bills, all bills
19 dealing with voting and elections went to the State
20 Affairs.

21 Q And is there a reason why all bills dealing with
22 voting and elections go to State Affairs?

23 A Well, you know, generally, it's like any
24 committee, you want uniformity, you want people that you
25 have -- you want people that develop knowledge, a general

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1 overall knowledge of that area of the law so that
2 legislation, when it comes through, is consistent.

3 And you don't -- it's just -- that is not
4 true just in election law; it's true in tort, health and
5 human services, other things. So you want to keep the
6 same people looking at the same issues to maintain
7 continuity at the committee level.

8 Q And is it fair to say that up to 2007, HB 218,
9 all of the photo ID legislation was referred to the State
10 Affairs Committee?

11 A That is my recollection. Plus a lot of other
12 bills.

13 Q Are you aware of any facts -- and, again, I'm
14 referencing specifically HB 218. Are you aware of any
15 facts that would support that noncitizens or illegal
16 aliens were voting at the polls in 2007?

17 MR. SWEETEN: Objection; legislative
18 privilege. You can answer.

19 A I am -- you know, again, I don't have
20 independent recollection of anything along that line.
21 Generally, I think there was concern about that. I think
22 we addressed it in the report. I think, you know, but,
23 generally and/or specifically, I have no independent
24 recollection of that.

25 Q (By Mr. Gear:) And can you identify a little

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1 more detail regarding the report that you believe you
2 addressed --

3 A Well, we did an interim study on that issue
4 that reflected, I think, what I felt was a fairly good
5 recollection of those issues.

6 Q And was that an interim study in 2007?

7 A '06.

8 Q 2006. And was that through the State Affairs
9 Committee?

10 A Yes, sir.

11 Q And in 2006, did you chair the State Affairs
12 Committee?

13 A Yes.

14 Q Did you call for this interim study --

15 A No.

16 Q -- report to be conducted?

17 A No.

18 Q Do you know who called for this interim report
19 and study to be conducted?

20 A It was part of general charges of the
21 Legislature that the Lieutenant Governor gives the
22 committee for a study.

23 Q And can you tell me the process that was
24 followed regarding the interim report?

25 A 2006 was a long time ago. I think probably the

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1 record reflects the hearings and the -- and the report
2 itself.

3 Q So, related to the 2006 report, do you recall
4 what the results of the -- is it fair to say that it was
5 an analysis of noncitizens and illegal aliens voting at
6 the polls?

7 A No. I don't think -- I don't know. You would
8 just have to read the report. The report speaks for
9 itself. I don't -- I'm not going to have independent
10 recollection of things other than in the report.

11 Q As you sit here today, was there any evidence of
12 noncitizens or illegal aliens being prosecuted for voting
13 at the polls in 2006 or 2007?

14 A I don't recall that.

15 Q Was there any evidence identified within the
16 2006 report that noncitizens or illegal aliens had
17 committed voter impersonation at the polling place?

18 A You would just have to -- the report will
19 indicate what the findings were.

20 Q And, again, I don't mean to --

21 A I know you don't.

22 Q -- drill down too deep on this, but I just want
23 to understand what you know, as you sit here today.

24 And, again, referencing the 2006 report,
25 do you have any recollection that there was any evidence

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1 of noncitizens or illegal aliens voting at the polls in
2 2006 or 2007?

3 A I have no recollection, just because it's eight
4 years ago or however -- whatever the math is for that.
5 I'm not trying to be coy with you.

6 Q Sure.

7 A It's just I want to be accurate --

8 Q Sure.

9 A -- and that's a long time ago.

10 Q So let me expand that question then. During
11 the course of consideration for any of the photo ID
12 legislation, do you have any recollection that there
13 were -- there was any evidence produced during the
14 consideration of photo ID legislation that would support
15 that noncitizens or illegal aliens were prosecuted for
16 voting at the polls?

17 MR. SWEETEN: Objection; legislative
18 privilege. You can answer.

19 A I don't have independent recollection of that.
20 The record may or may not speak to that. I don't have
21 independent recollection.

22 Q (By Mr. Gear:) But is it fair to say, as you
23 sit here today, you don't have any specific recollection
24 of that evidence being produced on the public record for
25 any of the photo ID legislation?

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1 MR. SWEETEN: Objection; asked and
2 answered. Go ahead.

3 A No, I don't. We had several hearings, and one
4 of them went 24 hours, so I -- you know, I'm not going to
5 be -- you know, the record will reflect what was said,
6 and we accept the record -- a record of what was said in
7 each of those hearings.

8 So, you know, I will rely on that record
9 as to what was said, but I don't have independent
10 recollection, one way or the other, as we sit here in
11 August of 2014.

12 Q (By Mr. Gear:) Sure. And just to focus again
13 on the record, which you testified that you would rely on,
14 do you have any reason to dispute what the record would
15 reflect related to that issue?

16 A I wouldn't be in a position to dispute it or
17 affirm it either. I mean, it's just -- the record is the
18 record, and I am sure you-all -- whatever you-all --
19 however you-all have preserved the record is not my -- a
20 matter that I would be able to evaluate.

21 Q So, related to any photo ID legislation that was
22 considered in the House or the Senate, are you aware of
23 any prosecutions of noncitizens for voter impersonation at
24 the polls?

25 MR. SWEETEN: Same objection; legislative

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1 privilege. Go ahead.

2 A I will stay with my answer. I do not, but
3 there may be something in the record, and I'm going to
4 refer you to the record, because, again, I don't have
5 independent recollection of that particular fact coming
6 out, whether or not it did.

7 Q (By Mr. Gear:) Do you have any recollection of
8 the Texas Attorney General's Office providing testimony in
9 2007 regarding the prosecution of voter fraud?

10 A I believe there was -- there was information
11 provided by the Attorney General's Office at that time.

12 Q And based on that testimony, do you have any
13 recollection that the Texas Attorney General's Office in
14 2007 presented any evidence of prosecution of voter fraud?

15 A The record will speak to that. I don't have
16 independent recollection other than what the record might
17 show. I would refer you to the record.

18 Q Looking at RD-3, is there any provision in
19 there, that you are aware of, that would have prevented
20 noncitizens or illegal aliens from voting at the polling
21 place?

22 MR. SWEETEN: Objection; legislative
23 privilege. Go ahead. You can answer.

24 A That is an analysis that I don't know that I
25 can make, sitting here in a deposition, I mean. So I

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1 don't know -- I can't answer that accurately.

2 Q (By Mr. Gear:) Fair enough. Are you aware of
3 an analysis related to HB 218 that was conducted to
4 determine whether or not HB 218 would be effective in
5 preventing illegal aliens or noncitizens from voting at
6 the polling place?

7 MR. SWEETEN: Objection; legislative
8 privilege.

9 A If there was such an analysis, it would be in
10 the record.

11 Q (By Mr. Gear:) Are you aware of such an
12 analysis?

13 A No.

14 Q And I apologize if I've asked you this, but are
15 you aware of an analysis regarding voter fraud as it
16 relates to photo ID legislation in 2007 related to HB 218?

17 MR. SWEETEN: Same objection.

18 A I have no independent recollection today. The
19 record would reflect that.

20 Q (By Mr. Gear:) Regarding HB 218, are you aware
21 of any analysis related to how the types of ID in HB 218
22 would impact minority voters?

23 MR. SWEETEN: Same objection; legislative
24 privilege. Go ahead.

25 A I do not have independent recollection of that

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1 today. The record would reflect that information, that
2 particular -- either objection or analysis, objection to
3 the legislation or analysis offered.

4 Q (By Mr. Gear:) Do you recall opponents of Bill
5 HB 218 expressing concern, during the consideration of the
6 bill, that the types of photo ID required in HB 218 may
7 have a negative impact on minority, elderly, or poor
8 voters?

9 A I believe the record reflects that there was
10 debate and discussion along those issues.

11 Q And as the Chair of the State Affairs Committee,
12 did you have authority to conduct any specific analysis to
13 address those types of concerns?

14 A Well, I think every member of the Senate has
15 that authority. We, in the committee, basically try to
16 resolve issues, if there are issues. We have hearings,
17 and members vote their -- vote their beliefs and their
18 positions on the bills, and members lay out the reasons
19 for opposing bills and not opposing -- or in supporting
20 bills.

21 So there is a lot of analysis that goes
22 on there, as well, but as far as any analysis other than
23 what we do generally on the four or five hundred bills
24 that go through the committee, we do what we normally
25 do.

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1 Q So I just want to break that out and understand
2 your answer here.

3 Regarding HB 218, is it your testimony
4 that there was no analysis related to what the impact may
5 be on minority voters?

6 MR. SWEETEN: Objection; misstates
7 testimony.

8 Q (By Mr. Gear:) And, again, I just -- I am not
9 trying to trick you in any way. I just want to understand
10 what the testimony is.

11 A I don't know what you mean by "analysis." Each
12 member looks at each bill, and they analyze those bills
13 in their own -- with their own process. In the
14 committee, we hear from -- before the bill is heard, we
15 hear from people objecting or not objecting, and we try
16 to relay information to other members.

17 We develop a record, and then the members
18 and the sponsors of the bill bring forth witnesses and
19 evidence in support. The opponents bring forth
20 witnesses and evidence in opposition. This happens on
21 every bill that we do.

22 And voter ID was, you know, really no
23 different, other than it was in 2007. Actually, it was
24 a bill that was considered like every other bill.

25 Q Would it be fair to say that photo ID

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1 legislation was controversial in the Senate?

2 A It was. It's not the only bill that was
3 controversial either, but it certainly was.

4 Q You've indicated -- You've testified that
5 senators conduct -- follow their own process -- and
6 forgive me if I am misstating this; I am just trying to
7 understand the testimony again -- that there's -- they
8 follow a process when working their way through the bill.
9 Is that fair to say?

10 A Yes, sir.

11 Q So, related to HB 218 and the concerns that were
12 expressed on the Senate floor, regarding the impact to
13 minority voters, as the Chair of the State Affairs
14 Committee, did you follow any process to determine if
15 those concerns were valid?

16 MR. SWEETEN: Objection; legislative
17 privilege. You can answer.

18 A You know, the answer to that question is yes.
19 We always try to listen to concerns in the committee and
20 determine whether or not they are valid.

21 Did we commission a study that would take
22 five weeks or six weeks or two years? No. We don't
23 have time to do that. When you get a bill in the Senate
24 in April -- which what was the date that we received
25 this bill? We received this bill -- it was April --

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1 Q (By Mr. Gear:) We can look back at the
2 legislative online history and roll.

3 A April 26th. There was literally 30 days left
4 in the session and probably less than two weeks to be
5 able to process the bill, have a hearing in committee,
6 and have a hearing on the floor. So we rely on a lot of
7 different evidence, and the Legislature is different from
8 Congress, in that we operate on very strict deadlines.

9 And when you are in the Senate and you
10 receive a House bill later in the session, you don't
11 have time to commission studies or that sort of thing,
12 but people bring evidence and put evidence in the
13 record. And as the committee, we encourage that, we
14 invite that, and we make sure that we have a hearing
15 that allows for that.

16 And then the members can conduct their
17 analysis of whether or not they believe differently or
18 what weight -- let's put it like this -- the members, on
19 their own, decide what weight they are going to give to
20 the evidence that comes before them in the committee.

21 And so that is the process that happened
22 in House Bill 218, and that is the same process that
23 would go on for any bill that went through State
24 Affairs, Jurisprudence, Health and Human Services, or
25 any other committee.

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1 Q So is it fair to say that there was testimony by
2 opponents of the bill regarding the negative impact on
3 minority voters related to HB 218?

4 A I would refer you to the record.

5 MR. SWEETEN: Objection; asked and
6 answered on that question.

7 Q (By Mr. Gear:) Do you recall any testimony that
8 was presented by supporters of HB 218 that would have
9 supported the fact that there would have been no negative
10 impact to minority voters?

11 A I would have to refer to the record on that.

12 Q And as you sit here today, I would like to
13 understand your testimony.

14 Do you have any independent recollection
15 of that type of testimony being presented by supporters
16 of HB 218?

17 A You know, I really don't, but if you look --
18 I'm sure that there was testimony for and against the
19 bill. I mean, this was a bill that had a lot of -- it
20 was controversial, as you said. And so we have hearings
21 about that, and we talk about it, and our committee was
22 very good about debating issues in the committee and on
23 the floor.

24 This bill went to the floor, and it was
25 debated on the floor as well, so -- but I don't have

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1 any -- you know, just to sit here today, six or seven
2 years later, you know, I would be -- I am very hesitant,
3 because I would be only speculating and be inaccurate
4 about specific things, but the record will reflect the
5 specific things.

6 Generally, I'm sure there was testimony
7 in opposition and in favor of the bill.

8 Q Well, let's talk specifically about you and your
9 role as the committee chair.

10 Do you -- Do you have any recollection of
11 how you responded to these concerns?

12 MR. SWEETEN: Objection; legislative
13 privilege.

14 Q (By Mr. Gear:) Just so I'm clear, the concerns
15 that HB 218 would have a negative impact on minority
16 voters.

17 MR. SWEETEN: Objection; legislative
18 privilege.

19 A I supported the bill. I listened closely to
20 the testimony. And as far as what my thought processes
21 were seven years ago, no, I don't, but, generally, I
22 listened to the testimony, and I felt that the --
23 weighing the evidence, I weighed in favor of supporting
24 the bill.

25 Q (By Mr. Gear:) Do you have any recollection of

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1 whether you were concerned about the testimony by the bill
2 opponents related to the impact on minority voters?

3 MR. SWEETEN: Objection; legislative
4 privilege.

5 A No, I really don't. I mean, it's not saying I
6 dissent. I mean, I don't. As it goes back to 2007, it
7 was a long time ago. So I do know I supported the bill.

8 I really don't have any independent
9 recollection of that particular hearing, other than what
10 I am reminded of in the record. That's how I have to
11 process this, is what is in the record.

12 Q (By Mr. Gear:) Do you have any independent
13 recollection of taking any steps, as the committee chair,
14 or directing your staff to look into the possibility that
15 HB 218 may have a negative impact on minority voters?

16 MR. SWEETEN: Objection; privilege.

17 A You know, I don't recall. I do know that we --
18 we hear objections. We try to follow through with
19 understanding those objections and present them to the
20 committee. It's not our -- It's not our job to pass
21 judgment along those lines. It's our job as the
22 committee to make sure that the members have the evidence
23 before them so they can make informed decisions.

24 And to the extent we have these
25 compressed timelines in the, you know, legislative

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1 process, you know, sometimes we are -- we are moving
2 fairly quickly but efficiently.

3 And I think this bill had -- 218, I'm
4 sure the record reflects, had a lot of -- a lot of
5 people weighed in on the issue, and the members made
6 their decision, for whatever reason, in their judgment.
7 They either supported or opposed the bill.

8 Q (By Mr. Gear:) Do you recall any of the
9 communication by Senator Fraser on the Senate related to
10 HB 218?

11 A No, sir.

12 Q Would it be fair to say his statements related
13 to HB 218 would be contained in the public record?

14 A I think that is a fair statement.

15 MR. SWEETEN: Let's take a break.

16 (Short break taken.)

17 MR. GEAR: So, back on the record after
18 taking a brief break.

19 Q (By Mr. Gear:) We were talking about HB 218. I
20 wanted to ask you some questions about the process of
21 considering HB 218.

22 Do you recall a point, when it was being
23 considered by the Senate, where Senator Fraser was
24 recognized for a motion to suspend the regular order of
25 business for HB -- to take up HB 218?

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1 A Sitting here today, do I remember that? No,
2 but I know it happened.

3 Q If I showed you the legislative record on that,
4 would that help refresh your recollection?

5 A Sure.

6 (Duncan Deposition Exhibit Number RD-5
7 marked.)

8 Q (By Mr. Gear:) So I'm showing you what's been
9 marked as RD-5, which is Bates-stamped USA 00023200, and
10 it's also identified as JA 008318. Now, I will just give
11 you a chance to take a look at that.

12 And so it's also clear, I believe this is
13 the excerpt of this legislative record. And my first
14 question will be: Can you identify this for me?

15 A Well, this appears to be an excerpt from the
16 Senate Journal for Tuesday, May the 15th of 2007.

17 Q And that is during the 80th Legislative Session,
18 2007?

19 A If you say so. I don't think it says it on
20 this document that I'm looking on. I don't see it,
21 but -- it's the 80th, yeah. Here it is. It's spelled
22 out. I'm sorry. It does say "Eightieth."

23 Q Well, let's just turn to the last page, which
24 has an indication of Page 38, and it is JA 008320. It
25 also has a Bates-stamp of USA 00023202. And I would just

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1 call your attention to the bottom of the last page, where
2 it indicates, "Committee Substitute, House Bill 218 on
3 Second Reading." Do you see that?

4 A Yes, sir.

5 Q And in this legislative record, it indicates
6 that Senator Fraser moved to suspend the regular order of
7 business to take up for consideration CS HB 218, and at
8 this time, on its second reading. Do you see that?

9 A Yes, sir.

10 Q And do you also see what happened with the
11 motion based on this record?

12 A According to the record, the motion prevailed.

13 Q And what did it prevail by?

14 A Nineteen yeas, nine nays.

15 Q And do you see an indication of who voted
16 against suspending the regular order of business to take
17 up consideration of HB 218?

18 A Yes, sir.

19 Q And Senator Ellis would be one of the people
20 that voted against it?

21 A That is correct.

22 Q And how do you pronounce --

23 A Gallegos.

24 Q Gallegos?

25 A Yes, sir.

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1 Q Hinojosa?

2 A Hinojosa.

3 Q Hinojosa. Maybe if you just pronounced the
4 names for me, that might go faster.

5 A Lucio, Shapleigh, Van de Putte, Watson, West,
6 and Zaffirini.

7 Q And as to the discussion as to why they were
8 voting against suspending the regular order of business,
9 do you have any independent recollection of that?

10 A I have independent recollection that there was
11 a discussion. I don't remember what each member said, as
12 it relates to their position on the bill.

13 Q Let's focus specifically on Van de Putte. Do
14 you recall receiving a letter from Senator Van de Putte
15 regarding HB 218?

16 A Not specifically, but I wouldn't doubt that I
17 did. I don't know. I would just have to see.

18 Q Do you recall Senator Van de Putte expressing
19 concerns that related to HB 218 that this photo ID
20 legislation may result in a negative impact to minority
21 voters?

22 A I know that Senator Van de Putte had taken that
23 position before, and so I don't have independent
24 recollection at this time of 218, but, you know, if you
25 have something in the record, I'm sure I wouldn't -- I

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1 wouldn't doubt that.

2 Q Okay. Do you see also on the Senate Journal,
3 last page, JA 008320, that two senators were counted
4 absent when the vote to suspend the regular order of
5 business to take up HB 218 was considered?

6 A I think actually three members were absent.

7 Q And what three members were those?

8 A Senator Hegar, Uresti, and Whitmire.

9 Q Was Senator Hegar an opponent or supporter of HB
10 218; do you recall?

11 A Well, I believe that he supported the bill. I
12 guess you would have to ask him, but --

13 Q Based on your recollection.

14 A Generally, I think he was a supporter.

15 Q Do you know if Senator Uresti was a supporter or
16 opponent of HB 218?

17 A I believe he was an opponent.

18 Q What about Senator Whitmire?

19 A I believe he was an opponent.

20 Q Do you recall the circumstances surrounding
21 Senator Uresti being counted absent on this particular
22 day? And we're talking about May 15, 2007.

23 A I have a general recollection that he was
24 absent, but I don't -- the record would reflect the
25 details on that. I don't have an independent

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1 recollection of that. To be accurate, I remember there
2 was an issue about his absence. That is what I remember.

3 Q If I were to represent to you he was ill on that
4 day, would that help refresh your recollection as to
5 Senator Uresti's absence?

6 MR. SWEETEN: Objection, assumes facts not
7 in evidence. You can answer to the best of your
8 knowledge.

9 A You know, whatever the record reflects on that,
10 you know, would be -- I don't know if he had an excused
11 absence or an absence or what. I do not know. I just --
12 I just remember vaguely there was an issue about him not
13 being there.

14 Q (By Mr. Gear:) Do you recall the circumstances
15 surrounding Senator Whitmire being counted as absent
16 during the vote to suspend the regular order of business
17 to take up HB 218?

18 A I do recall that.

19 Q And can you tell me the circumstances --

20 A I think he was off the floor. I don't think he
21 was actually absent at the time of the vote.

22 Q And can you tell me what the process is for
23 counting a senator present once he checks in on the floor?

24 A The -- Say that again.

25 Q I will do my best to restate that.

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1 A Okay.

2 Q I'm trying to understand. Is there a procedure
3 or a process in place, once a senator checks in on the
4 floor, related to whether or not they would be counted as
5 present during votes. Does that make sense?

6 A I think so.

7 Q Okay.

8 A At the beginning of the day, the secretary
9 calls the roll.

10 Q Secretary of the Senate?

11 A Secretary of the Senate. Patsy Spaugh, in this
12 case. And if you are -- if you are absent, typically,
13 you cannot be there because of illness or business, then
14 you report that you are -- report that -- the president
15 of the Senate will then entertain a motion to provide an
16 excused absence.

17 Q And do you recall if Senator Whitmire was
18 present during the initial roll call by the Secretary of
19 the Senate?

20 A I don't recall that.

21 Q Do you recall discussion by Senator Whitmire
22 related to this particular issue; that he was present when
23 the motion to suspend the regular order of business was
24 taken up to consider HB 218?

25 A I don't remember the details of anything

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1 Senator Whitmire said, but I do recall that he was
2 temporarily off the floor at the time the vote was taken,
3 and I think he objected to the fact that he was
4 temporarily off the floor and wasn't counted, for
5 whatever reason.

6 Q And so, if a senator was on the floor, would it
7 be unusual for him to be counted as absent once he has
8 checked in with the Secretary of the Senate?

9 A No, but if he doesn't register a vote -- and I
10 think that's if you are temporarily off the floor and a
11 vote is called -- then the secretary calls your name, and
12 if you're not there, then she can't record your vote.
13 And so I think that's what happened here.

14 Q Do you recall Senator Whitmire stating that he
15 was present during the vote?

16 A No, I don't. He was -- I think he was off the
17 floor, is my recollection. I don't know if the record
18 reflects anything different, but that's what I recall.

19 Q Based on that discussion, do you recall if there
20 was a request to verify the vote related to the motion to
21 suspend --

22 A Yeah.

23 Q -- the regular order of business?

24 A Yes, according to the -- according to the
25 record here, there was --

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1 Q And which document are you referring to? I'm
2 sorry.

3 A The Senate Journal or Exhibit RD-5.

4 Q And who made that request to verify the vote?

5 A Senator Shapleigh.

6 Q And, specifically, Senator Shapleigh called for
7 a verification of the vote by which the regular order of
8 business was suspended for HB 218?

9 A Yes, sir.

10 Q And do you recall what happened when he called
11 for a verification of the vote?

12 A No.

13 Q Do you recall there being a second vote to
14 consider suspending the regular order of business to take
15 up HB 218?

16 A You know, I don't recall exactly what happened.
17 I recall that -- Let me see the record. I recall that
18 there was -- there was additional activity after this,
19 but I don't recall exactly what happened.

20 So, if you will show me the record, I
21 will -- that will refresh my memory.

22 Q Well, actually, I only have one copy of this.
23 Let me just see what your independent recollection is --

24 A I have told you that -- you have got everything
25 I can tell you, you know.

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1 Q Let me try this. Do you recall a discussion
2 between Senator Fraser and Senator -- is it Shapleigh? Is
3 that --

4 A That's how you pronounce the name, Shapleigh;
5 yes, sir.

6 Q Do you recall if there was a discussion
7 regarding the verification of the vote?

8 A No, sir. There may have been. I just --
9 again, I would have to refer to the record.

10 Q I will see if I can -- Do you believe the record
11 would reflect what happened in that particular
12 circumstance?

13 A It should.

14 Q Do you recall if there was a second vote
15 regarding HB 218 to suspend the regular order of business?

16 A I do not recall.

17 Q Do you recall if HB 218 passed out of the
18 Senate?

19 A I know it didn't.

20 Q And do you recall why it did not pass --

21 A That's what I am trying to ask -- the record
22 would reflect that.

23 I know there were general discussions,
24 and it primarily related around Whitmire's temporary
25 absence from the floor, but I don't recall what -- I

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1 don't recall exactly how -- what procedural activity
2 took place that caused the bill to fail. I just recall
3 that it did fail.

4 Q So, if you look at RD-5 -- and I'm sorry. If
5 you look at RD-5, last page, JA 008321, do you see that?

6 A I don't know. I know why -- I don't have
7 the -- mine stops with 320; RD-5 does. Well, I guess
8 maybe I'm in the dark here. I don't have the last page.

9 Q I apologize for that. I have marked on this, so
10 I don't want to introduce it as an exhibit, but --

11 A You have notes on there?

12 Q Not really. I will show you what has already
13 been marked as RD-5 --

14 A I see.

15 Q -- correct, and just direct you to the last
16 page. And can you identify the Bates-stamped numbers on
17 that?

18 A Well, this -- what you have handed me, which is
19 I guess an auxiliary exhibit, but it's JA 008321, which
20 would seem to follow the Bates stamp on RD-5.

21 Q Okay. And just so the record is clear, turning
22 to the first page of this exhibit, would you agree that it
23 is the same document minus the 21 Bates stamp?

24 A I will accept your representation of that.

25 Q Okay. So then looking at -- looking at JA

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1 008321, which is also Bates-stamped USA 00023203 -- I've
2 been asking you: Do you recall if there was a second vote
3 to suspend the regular order of business.

4 And if I showed you the last page, would
5 that refresh your recollection as to what happened
6 regarding HB 218?

7 A Can I look back in this?

8 Q Sure. You certainly can. I don't think I have
9 any notes in there.

10 A (Witness reviewing document.) The record
11 reflects that when the roll call occurred on Senator
12 Shapleigh's motion for verification, that Uresti and
13 Whitmire were on the floor and registered to vote, along
14 with Ellis, Gallegos, Shapleigh, Van de Putte, Watson,
15 West, and Zaffirini, and that Senator Hegar was also on
16 the floor for the verification.

17 And so the motion, which required 21
18 votes, failed on a vote of 20 yeas and 11 nays.

19 Q So, just so the record is clear, the -- I will
20 take that back. Thank you.

21 The motion to suspend the regular order of
22 business was lost by the -- by a vote of 20 to -- 20 yeas
23 to 11 nays?

24 A Right.

25 Q And the same senators who voted to -- who

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1 opposed the suspension of the regular order of business on
2 the first vote also voted to oppose the regular order of
3 business on the second vote, but it also included Senator
4 Uresti and Senator Whitmire. Was that your testimony?

5 A Apparently, they were on the floor whenever the
6 vote roll call was taken.

7 Q And what, if any other consideration, was there
8 of HB 218 by the Senate after this particular vote?

9 A I don't -- I don't know. The record would
10 reflect that. I don't know if there was another motion
11 to suspend. I don't think there was, but I don't know
12 that for sure.

13 Q So, as you sit here today, are you aware of any
14 additional action taken on HB 218?

15 A No, sir.

16 Q And I apologize for that confusion. I was
17 missing a page.

18 A That's all right.

19 Q In 2009, do you recall that SB 362 of photo ID
20 legislation was introduced by Senator Fraser in the
21 Senate?

22 A Yes, sir.

23 (Duncan Deposition Exhibit Number RD-6
24 marked.)

25 Q (By Mr. Gear:) And just to put the bill into

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1 context, again, I'm going to hand you what has been marked
2 as RD-6. I'll give you an opportunity to look at that
3 document, and if you could, identify that for me, please.

4 A (Witness reviewing document.) RD-6 appears to
5 be a Texas online history of Senate Bill 362 in the 81st
6 regular session.

7 Q And do you recognize this as the legislative
8 history of SB 362?

9 A That would appear to be what this is.

10 Q And based on RD-6, can you tell me when SB 362
11 was filed? And I will direct your attention to Page 2
12 of 3.

13 A Yeah. I'm not sure what this is. I don't
14 understand this first entry on -- received by the
15 Secretary of the Senate. I guess it seems out of order.
16 It looks like it was filed on December 15th of 2008.

17 Q And it was read for the first time on
18 February 17th of 2009, based on the record?

19 A That is what the record reflects.

20 Q Now, it appears that on February 17th, 2009,
21 SB 362 was referred to the committee of the whole. Do you
22 see that?

23 A Yes, sir.

24 Q Can you tell me the circumstances surrounding
25 the decision to refer SB 362 to the committee of the

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1 whole?

2 A Prior to February 17th of 2009, the Senate
3 debated or made an addition to the Senate rules that
4 would allow for a special order or for voter legislation
5 dealing with voter identification that would be handled
6 as a special order, under the rules, with a referral to
7 the committee of the whole.

8 And so that was the procedural step, that
9 the Senate voted on, that resulted in the legislation
10 being referred to the committee of the whole.

11 Q And are you -- are you referring to Senate
12 Resolution 14?

13 A I don't recall the number of it, but it was --

14 Q Well, let's back up a second. So I would like
15 to understand your testimony.

16 You said that the Senate considered a
17 special order regarding SB 362. Were you involved in any
18 communications regarding the decision to refer SB 362
19 directly to the committee of the whole?

20 A I'm sure I was at some point in time.

21 Q And do you recall when these discussions took
22 place?

23 A Are you talking about after the -- what period
24 of time are you talking about?

25 Q I am talking about: Prior to the special order

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1 being introduced to the Senate, were you involved --

2 A Prior to the rule change?

3 Q Prior to the rule change. Thank you. Were you
4 involved in discussions or communications regarding the
5 rule change itself?

6 A Yes.

7 Q And when were you involved in these discussions?
8 Do you have an idea --

9 A Probably right before the legislation session
10 started, because during that period of time, you adopt
11 the rules usually on the first two or three days of the
12 legislative session.

13 And so I know that the special order
14 process, which had been in the rules before and used
15 before, I think by Bullock and some others, other
16 Lieutenant Governors, was discussed, and it was
17 presented to me as, you know, a way to try to resolve
18 the voter ID issue and also -- but that it would require
19 going to the committee of the whole.

20 That is what I recall hearing about
21 it. There was a lot of discussion about it on the
22 Senate floor, whenever we debated it, and I remember
23 very clearly that -- my mother died that day, so I
24 remember --

25 Q I'm sorry to hear that.

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1 A -- I remember the discussions. And it was a
2 very heated debate. It took a -- It took a while, but
3 the Senate voted to amend its rule to allow the special
4 order process to apply to specific legislation dealing
5 with voter identification, but it had to go to the
6 committee of the whole.

7 Q So you've said a lot of things in that
8 statement, and I would like to try to break that out a
9 little bit.

10 Prior to the rule change, you were
11 involved in communications regarding the determination to
12 make this rule change. Can you tell me who was present
13 during those communications?

14 A No. I recall the author, Senator Williams,
15 was, and I'm sure he did this -- you know, he explained
16 the research that his staff had done, what he had
17 concluded would be consistent methodology for going to
18 consider this.

19 And that's basically what we -- that's
20 what I recall. That's about it.

21 Q Did he share the research that was done
22 regarding this rule change?

23 MR. SWEETEN: One second. With respect to
24 the communications, we are asserting legislative
25 privilege on that. Go ahead. You can go ahead and

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1 respond.

2 A He probably would have if I had asked, but I --
3 no, I didn't. I didn't.

4 Q (By Mr. Gear:) Do you know the reason for this
5 rule change?

6 MR. SWEETEN: Same; legislative privilege.

7 A Well, I think the reason for this was: This is
8 an issue that certainly was controversial, and it
9 certainly was a process that allowed us to, I think,
10 explore this very deeply and for the members to be able
11 to vote fairly efficiently on the bill, so -- and for all
12 members to have the opportunity to be involved in the
13 committee process.

14 Q (By Mr. Gear:) I'm not sure I understand that
15 testimony.

16 Would you consider it unique that photo ID
17 legislation was being required to be heard by the
18 committee of the whole?

19 MR. SWEETEN: Objection; legislative
20 privilege.

21 A No.

22 Q (By Mr. Gear:) Had any photo ID legislation
23 been heard by the committee of the whole prior to 2009,
24 SB 362?

25 A There are -- It's my understanding -- and,

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1 again, you would have to go to the record on this or go
2 to the records and do the research -- but that the --
3 that the special order process had been used before --
4 which actually was a -- was in the rules. It was a
5 provision that was in the rules, and this voter ID was
6 added to that.

7 Q Well, we haven't discussed this in any detail,
8 but do you recall that there was photo ID legislation in
9 2005? I believe that was HB 1706.

10 A No.

11 Q We talked in detail about HB 218. That was
12 referred directly to the State Affairs Committee, correct?

13 A Right.

14 Q Prior to -- and that was in 2007, correct?

15 A Right.

16 Q Prior to 2007, specifically, are you aware of
17 any photo ID legislation that had been referred directly
18 to the committee of the whole?

19 A No. No, I'm not aware of that.

20 Q So can you tell me each and every reason you are
21 aware of why SB 362 -- why the rules were changed so that
22 SB 362 was referred directly to the committee of the
23 whole?

24 MR. SWEETEN: Objection; legislative
25 privilege. Objection; asked and answered. You can

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1 answer.

2 A The provisions or the special order rule was
3 debated for eight or nine hours on the Senate floor. The
4 reasons and the -- I will rely on the record as the
5 reasons for the passage of Senate Resolution -- what did
6 you say, 14 -- amending the rules; that those -- this
7 Senate acts as a body, and there are 31 members, and
8 there are 31 different reasons why people vote for
9 certain things.

10 And one person's reasons may be another
11 person's opposition. Who knows. I will rely on the
12 record of the debate where members stated their reasons
13 on the Senate floor.

14 Q (By Mr. Gear:) There may have been 31 different
15 reasons, based on your testimony, but you were involved in
16 communications, I believe you've stated, with Senator
17 Williams regarding the reasons why SB 362 -- the rules
18 were amended to refer this directly to the committee of
19 the whole. Did I understand your testimony correctly?

20 A Right.

21 Q What reasons did Senator Williams provide as to
22 why SB 362 was required to be referred directly to the
23 committee of the whole?

24 MR. SWEETEN: Objection; legislative
25 privilege. You can answer.

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1 A I don't recall specifically what he said. I
2 think there are a number of considerations one could look
3 at.

4 One was, as I said earlier, a committee
5 of the whole would allow all members of the Legislature
6 to participate in the committee process and the in-depth
7 analysis and the -- and the listening to witnesses.

8 I think another reason -- you know, a
9 special order means that it doesn't come up in the
10 regular order of business, and that it could be taken
11 out of order without -- and be within the rules.

12 Q (By Mr. Gear:) When HB 218 was referred to the
13 State Affairs Committee, there were hearings on HB 218,
14 correct?

15 A Right.

16 Q And all senators are welcome to attend those
17 particular hearings?

18 A Well, as a practical matter?

19 Q Yes.

20 A They are welcome, but they can't -- if you've
21 ever been in the Capitol during the session, you will see
22 that there are multiple committee meetings going on all
23 at the same time, and members don't have the ability to
24 monitor other committees.

25 And so one of the advantages to this

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1 special order process was: It allowed all members of
2 the Senate to participate in the debate and listening
3 and hearing the witnesses and examining -- you know,
4 taking examination, cross-examination of the witnesses,
5 as well as presenting evidence themselves or presenting
6 their debate at the committee level.

7 And as you will recall and you may know,
8 we spent 24 solid hours in the committee of the whole,
9 taking testimony and debating the issue in the committee
10 of the whole.

11 (Duncan Deposition Exhibit Number RD-7
12 marked.)

13 Q (By Mr. Gear:) I want to show you what has been
14 marked as RD-7. We have been discussing a change in the
15 Senate rules.

16 Does this help refresh your recollection
17 as to Senate Rule -- or Senate Resolution Number 14?

18 A Yes, sir.

19 Q And, specifically, that is Rule 5.11.

20 A Correct.

21 Q And that is the special order that you have been
22 discussing here today on the record?

23 A That's what you've been asking me about; yes,
24 sir.

25 Q Looking at Page 2 of the exhibit I've just

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1 handed you, which is Bates Stamp Number USA 00025500, it
2 references Rule 5.11, correct?

3 A Would you say that again? I'm sorry.

4 Q And I apologize. Looking at Page Number 2 of
5 the exhibit that I've handed you, which is Bates Stamp
6 USA 00025500, it references the special order and
7 Rule 5.11, correct?

8 A Yes, sir.

9 Q And what did -- what did Resolution -- Senate
10 Resolution 14 allow in the Senate? What did it allow to
11 happen?

12 A Do you have it? I mean, I would like -- if you
13 will give me the resolution, I will testify from that, as
14 opposed to just -- I think you've got it somewhere.

15 Q I should. I only have one copy of this, but
16 I will show you what has been previously marked as
17 Exhibit 168, Duncan Exhibit 168.

18 A Is that out of the earlier deposition?

19 Q Yes.

20 (Duncan Deposition Exhibit Number RD-8
21 marked.)

22 Q (By Mr. Gear:) And I will mark this as RD
23 Exhibit Number 8 and give you an opportunity to look at
24 this.

25 A (Witness reviewing document.)

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1 Q Can you identify that for me when you get a
2 chance?

3 A (Witness reviewing document.) Okay. Your
4 question?

5 Q For the record, this is part of the Senate
6 Journal?

7 A Yes, sir.

8 Q And the date of the Senate Journal was the
9 second day, Wednesday, January 14th, 2009. Do you see
10 that?

11 A Yes, sir.

12 Q And this is dealing with the 81st Legislature
13 regular session?

14 A Yes, sir.

15 Q And we have been discussing Senate
16 Resolution 14. If you will turn to the second page,
17 which is about -- it has two Bates stamps on it, TX
18 0000890 and USA 0027620. Do you see the Senate
19 Resolution 14?

20 A Yes, sir.

21 Q And you've indicated that if you were able to
22 see Senate Resolution 14, you would be able to answer my
23 question?

24 A Yes, sir.

25 Q And does this help refresh your recollection?

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1 A Yes, sir.

2 Q And so my question was: What did Senate
3 Resolution 14 allow to happen within the Senate related to
4 SB 362?

5 A As it relates to voter identification
6 legislation, it added Subsection (d) to Rule 5.11
7 entitled "Special Orders," and it added a specific
8 paragraph dealing with a bill or resolution related to
9 voter identification requirements that are reported
10 favorably from the committee of the whole.

11 Q And again, my question would be: Has
12 Subsection (d) ever been added to amended rules to allow
13 photo ID legislation specifically to be heard by the
14 committee of the whole?

15 A I don't know the answer to that. I have no
16 information that -- no reason to believe that it was
17 before, but I haven't done that research.

18 Q Well, at the time SB 362 was considered, you
19 were the chair of the committee of the whole?

20 A I was appointed to serve as chair of the
21 committee of the whole when it was considered; yes, sir.

22 Q And who were you appointed by?

23 A The Lieutenant Governor.

24 Q That would be David Dewhurst?

25 A Correct.

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1 Q And why were you appointed to the --

2 A Or, actually, the President of the Senate would
3 be a better way to say that, but right, correct, yes,
4 sir.

5 Q So it would be more appropriate to refer to
6 Senator Dewhurst as the president?

7 A Well, he wasn't a senator either, but -- he was
8 Lieutenant Governor, but --

9 Q I'm sorry.

10 A -- President of the Senate.

11 Q Of the Senate?

12 A Right.

13 Q So the President of the Senate --

14 A Right.

15 Q -- David Dewhurst, appointed you to the
16 committee of the whole, correct?

17 A Correct.

18 Q And why did the president of the Senate appoint
19 you to the committee of the whole in 2009?

20 MR. SWEETEN: Objection; calls for
21 speculation. Objection; legislative privilege. You can
22 answer.

23 A I don't know. You know, I guess it's more
24 likely --

25 Q (By Mr. Gear:) Let me --

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1 A -- than not -- this is speculation on my part,
2 but more likely than not, it is because I chaired the
3 Senate State Affairs Committee, and I served as a
4 president pro tem in that session, as well. So it was a
5 natural -- for those two reasons, it was a -- probably a
6 fairly natural appointment.

7 Q Did you have any specific communications with
8 the President of the Senate --

9 A I'm sure I did.

10 Q -- David Dewhurst, regarding your appointment to
11 the committee of the whole?

12 A I'm sure I did.

13 Q During those communications, did you have
14 any -- if you recall, do you have any recollection of
15 communications related to photo ID legislation and it
16 being heard by the committee of the whole?

17 A I'm going -- I don't have any specific
18 recollection of detailed communications other than, you
19 know, would you do this, and then, you know, instructions
20 to work with the members to come up with a process to
21 efficiently hear the legislation in the committee of the
22 whole. Those were my instructions.

23 Q And your instructions were to come up with a
24 process. What process did you come up with?

25 A Well, it's -- there is -- you know, we had a

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1 procedure for -- and I worked with Senator Van de Putte,
2 who was the chairman of the Democratic caucus, and the
3 author of the bill, Senator Fraser, and the secretary of
4 the Senate and the sergeant at arms, about how we can do
5 this efficiently and allow citizens an opportunity to be
6 heard and members an opportunity to debate the bill in an
7 efficient way.

8 And I think we came up with a set of
9 procedures that actually I read in the -- they're in the
10 record, and so I don't want to try to guess at what they
11 were, but I think you have those in the record.

12 And I talked to Senator Van de Putte
13 about the requests that she had and other things that
14 we -- she and I worked through.

15 Q Do you recall receiving any e-mails, letters
16 from the president of the Senate, related to your
17 appointment as the chair of the committee of the whole?

18 A I don't know if I did or not, quite frankly.

19 Q You've testified --

20 A There may be something. I don't know.

21 Q You've testified that you had communication with
22 Senator Van de Putte regarding 362 and attempting to come
23 up with the procedures --

24 A Uh-huh.

25 Q -- as to how it would be handled in the

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1 committee of the whole; --

2 A Correct.

3 Q -- is that correct?

4 (Duncan Deposition Exhibit Number RD-9
5 marked.)

6 Q (By Mr. Gear:) I'm going to show you what has
7 been marked as RD-9. It was previously marked as Duncan
8 Exhibit 526 in the Texas v. Holder deposition that you
9 gave. And I will give you a chance to take a look at
10 that.

11 A (Witness reviewing document.)

12 Q I think you had testified previously that you
13 recalled seeing this letter from Senator Van de Putte in
14 2009?

15 A Yes, sir.

16 Q Focusing in on Number 2 on Page 1, which is
17 Bates-stamped USA 00033763, Senator Van de Putte is asking
18 you to conduct a detailed analysis on the effects on
19 minority voters protected under the Voting Rights Act. Do
20 you see that?

21 A (No verbal response.)

22 Q More appropriately, let me just add that she is
23 requesting that the Senate conduct a detailed analysis on
24 the effects of minority voters protected under the Voting
25 Rights Act.

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1 A I see that she, among other -- kind of a list
2 of things that's in the list that she had requested.

3 Q So, again, similar to 2007, when HB 218 was
4 being considered, Senator Van de Putte requested that, you
5 know, there be some type of analysis conducted to
6 determine the impact on minority voters as it relates to
7 photo ID legislation; is that correct?

8 A Yes. It's -- I mean, she requested a detailed
9 analysis. And I'm not sure. She wasn't specific in what
10 she wanted that to be, but she did request something
11 along that line in Paragraph 2.

12 Q Well, specifically, she requested that a
13 detailed analysis on the effects on minority voters
14 protected under the Voting Rights Act be conducted. Do
15 you recall --

16 A I don't think she really says that.

17 Q Do you recall --

18 A I don't want to argue, but I don't think --
19 that's not what she said.

20 Q I'm sorry. I'm talking over you. Were you
21 finished with your answer?

22 A I think she just -- she asked for a detailed
23 analysis. She doesn't say -- and I think you implied
24 that the Senate should conduct that analysis. I don't
25 think that's what she's saying here.

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1 I think she says there should be some,
2 you know, evidence or whatever, but she doesn't, I
3 think, call for the Senate to conduct a detailed
4 analysis. I think -- I don't read it that way. Maybe
5 you do, but I just don't read it that way.

6 Q Well, let's be clear for the record. This
7 letter is from Senator Van de Putte; is that correct?

8 A That's right.

9 Q And it's dated March 3rd, 2009?

10 A Yes, sir.

11 Q And it's to you, the chair of the committee of
12 the whole?

13 A Yes, sir.

14 Q And it specifically says to "Chairman Duncan"?

15 A Right.

16 Q And, again, this is from Senator Leticia Van de
17 Putte, and the subject here indicates "Ground rules,
18 Committee of the Whole Public Hearing"?

19 A Right.

20 Q And so is it fair to say that she's addressing
21 these concerns directly to you?

22 A She was.

23 Q And so, based on the concerns raised by Senator
24 Van de Putte that the detailed analysis on the effects on
25 minority voters protected under the Voting Rights Act

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1 should be conducted, did you, as the chairman, take any
2 steps to address her concerns?

3 MR. SWEETEN: Objection; it assumes facts
4 not in evidence. Objection; argumentative. You can
5 answer.

6 A We did. We set up a process for each side of
7 the issue, proponents and opponents, to invite the expert
8 witnesses that they felt were most appropriate for the
9 issues that are involved in this debate.

10 And so that was a response, and I know
11 she and I worked with that, to try to accommodate each
12 other on that, as well, as much as we can, and given the
13 time frames and the different demands on everybody's
14 schedule.

15 So, yes, we -- I believe we did -- we did
16 address those issues in her request.

17 Q (By Mr. Gear:) Do you recall expert testimony
18 from the opponents of SB 362 that there would be a
19 negative impact on minority voters?

20 A I don't recall that. I don't recall the
21 details of either side, as we sit here today, but the
22 record would reflect it. And we kept a -- we put a court
23 reporter out there, and we made sure that an accurate
24 record was made for that.

25 And we basically, I think, gave

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1 members -- the experts plenty of time to testify, and we
2 allowed members, you know, unfettered time in
3 questioning those witnesses. So I believe that there
4 was a -- the record will reflect what that information
5 was, what that testimony was, though.

6 And there was -- in addition to oral
7 testimony, there was exhibits -- there were exhibits
8 that were introduced and catalogued as they went into
9 the record.

10 Q And, in fact, her letter was catalogued as
11 Exhibit --

12 A I'm sure it was.

13 Q -- 1A based on the --

14 A Yeah.

15 Q -- exhibit that I've just handed to you?

16 A That's correct.

17 Q So I'm trying to understand your testimony, and
18 I don't want to --

19 A I don't know if it was -- let me -- okay.
20 Maybe it was -- right. I'm sorry. I'm just trying to be
21 clear. You're correct.

22 Q I'm trying to understand your testimony. As the
23 chair of the committee of the whole, did you direct anyone
24 within the Senate to conduct an analysis, a detailed
25 analysis, on the effects on minority voters protected

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1 under the Voting Rights Act?

2 A No.

3 Q As the chair of the committee of the whole, are
4 you aware if any senator conducted a detailed analysis on
5 the effects of photo ID legislation related to minority
6 voters?

7 MR. SWEETEN: Objection; vague as to what
8 the analysis would be. But you can answer.

9 A As we would do with any bill, the proponents
10 and opponents of the legislation would bring the evidence
11 to the Senate, to allow us to weigh that evidence and
12 make our decisions.

13 We do not have a specific -- well, I'll
14 just stay with that. I mean, that's what we -- that's
15 how we do it. That's how we did it on this bill.

16 Q So you've said that Senate Resolution 14 was
17 controversial, and it was discussed for a number of hours
18 on the Senate floor, correct?

19 A Yes, sir.

20 Q Why was that bill controversial, or why was that
21 resolution controversial?

22 MR. SWEETEN: Objection; legislative
23 privilege. You can answer.

24 A I will go, again, with: There are 31 members.
25 So there were 31 reasons why it was controversial.

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1 Q (By Mr. Gear:) And what concerns were being
2 expressed by the opponents of SB 362?

3 A I think the primary concern was the -- being a
4 special order of business, that it would not require
5 suspension to take up on the Senate floor.

6 Q And why was that a concern to opponents of SB
7 362?

8 A You will have to go to the record for that.
9 I'm not going to speak for 31 members of the Senate.

10 Q And just so the record is clear, I'm not asking
11 you to speak for 31 members. I'm asking you to speak for
12 opponents, and there weren't 31 opponents --

13 A No.

14 Q -- to HB -- or SB 362.

15 A I really can't speak to them. It wouldn't be
16 appropriate nor would it be accurate. I think it would
17 be better to go to the record on that.

18 (Duncan Deposition Exhibit Number RD-10
19 marked.)

20 Q (By Mr. Gear:) I'm showing you what's marked as
21 RD-10, and I'll give you a chance to take a look at that.

22 MR. GEAR: I'll note for the record that
23 this document is marked as highly confidential.

24 A (Witness reviewing document.)

25 Q (By Mr. Gear:) Do you recognize this document?

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1 A No.

2 Q Have you seen this document before?

3 A No, I don't recall seeing it. I certainly
4 haven't seen it. I don't recall seeing this.

5 Q Do you recognize that this document deals with
6 reasons to support SB 362 as filed?

7 A Why don't you lay a foundation so I can
8 understand who prepared it and where it came from, and
9 then maybe that will refresh my recollection.

10 Q Do you know who prepared this or where this
11 document came from?

12 A No, no. I couldn't tell you, sitting here
13 today.

14 Q So, looking at Number 3 in Exhibit RD-10, which
15 is highly confidential and Bates-stamped TX 00087008, it
16 indicates that "Senators Fraser, Williams, and Duncan
17 support this version of the bill." Did you support
18 SB 362?

19 A I did.

20 Q And you voted in favor of SB 362?

21 A I did.

22 Q And you voted in favor of the provisions
23 contained within that SB 362?

24 A I did.

25 Q And it also indicates that you were explaining

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1 SB 362 to members of the Senate and the House.

2 Putting the exhibit aside, do you have --
3 do you recall explaining SB 362 to members of the Senate
4 and the House?

5 A I don't recall explaining it to the House. I
6 do recall -- if people ask questions of me about a bill,
7 I'll explain it. I didn't -- I don't think I scheduled
8 meetings to go around and talk to people. I didn't.

9 But if someone had a question about a
10 bill, you know, I would try to answer the question. If
11 not, I would get them to the right resource that would
12 answer their question. If I didn't have the answer or
13 if I didn't understand their question, I would.

14 Basically, that's pretty typical. It's
15 not just this bill. That's pretty typical of what we do
16 on any bill that comes through the Senate. That's what
17 the Chairman of Jurisprudence does on bills that come
18 through. That's a pretty typical thing that occurs.

19 Q Were you involved in any communications with any
20 legislators or with the Lieutenant Governor that
21 specifically requested that you explain the provisions of
22 SB 362 to the Senate?

23 MR. SWEETEN: Objection; legislative
24 privilege. You can answer.

25 A I probably was, but I don't have any specific

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1 recollection of anything. But I'm sure -- it's just what
2 I did in the regular course of any bill that I'm going
3 through.

4 This was a rather significantly debated
5 bill, and so, obviously, people had questions and wanted
6 to know, you know, what does this mean or what does that
7 mean. And I'm sure I was involved in some of those
8 discussions, but not primarily.

9 I was basically more involved in the
10 process of setting up the hearing and conducting the
11 hearing as opposed to crafting the legislation.

12 Q Do you recall who would have approached you to
13 discuss SB 362 with the Senate?

14 A No.

15 Q Specifically, do you recall if the Lieutenant
16 Governor approached you and asked you to explain SB 362 to
17 the Senate?

18 A No, he didn't.

19 Q Do you recall if the sponsor or the author of SB
20 362 approached you -- and that would have been Senator
21 Fraser, right?

22 A Right.

23 Q Do you recall if Senator Fraser approached you
24 and asked you to explain the provisions of SB 362 to the
25 Senate?

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1 A I'm pretty sure that he didn't. It was his
2 bill, and he developed the language and, you know, it was
3 his legislation. So I don't think he would have called
4 on me to explain it to him.

5 And, primarily, my job was to basically
6 make sure the process -- to preside over the hearing and
7 the process for hearing the bill in the committee of the
8 whole.

9 Q And I think we established that, in 2007, you
10 were the Chair of the State Affairs Committee, correct?

11 A That's right.

12 Q And do you agree with the proposition in
13 Number 2 that SB 362 was a compromise bill that was
14 basically the same bill that passed the House and the
15 Senate State Affairs Committee last session? That would
16 have been in 2007.

17 A I don't -- I don't know who authored this, and
18 I don't know what they're talking about. So I'm not
19 going to be able to answer any question with regard to
20 anything that's on this document, because I don't think I
21 prepared it, and I don't think I've ever seen it before.

22 Q Fair enough. Do you -- Would it be fair to say
23 that SB 362 was patterned after HB 218?

24 MR. SWEETEN: Objection; privilege. Go
25 ahead. You can answer.

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1 A Conceptually, it was similar. I think it had
2 different provisions in it.

3 Q (By Mr. Gear:) It was similar conceptually,
4 because it allowed for both photo and non-photo
5 identification, correct?

6 A I think -- which one?

7 Q I'm talking about SB 362, --

8 A Right.

9 Q -- as compared to 218.

10 A Yes, I think it was similar. It was similar
11 conceptually to that, but I don't know whether word for
12 word -- whether it was or not.

13 Q Do you have any recollection of having
14 communication with anyone in the Senate regarding SB 362
15 improving security in the election process, but not being
16 as restrictive as Indiana or Georgia?

17 MR. SWEETEN: Objection; privilege. You
18 can answer.

19 A No. But I don't recall any conversation like
20 that.

21 Q (By Mr. Gear:) Do you recall --

22 A And that was in 2011?

23 Q SB 362. We're still in 2009.

24 MR. SWEETEN: 2009.

25 A Or 2009? I'm sorry.

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1 Q (By Mr. Gear:) Do you recall communications
2 related to the Indiana photo ID legislation in 2009?

3 A Not in 2009.

4 Q Do you recall communications related to the
5 Georgia --

6 A And let me just say: I don't recall them.
7 There may be. I'm just saying, in 2009, I did not recall
8 having any conversations regarding that. There may have
9 been, if it was out there at that point in time, because
10 we always see how other states are doing things.

11 But I don't recall a specific discussion
12 along those lines.

13 Q Do you recall reviewing the Indiana photo ID
14 legislation?

15 MR. SWEETEN: In 2009, Bruce, is that what
16 you're saying, or at any time?

17 MR. GEAR: In 2009.

18 MR. SWEETEN: Okay.

19 A In 2009, I don't recall. I may have, but I
20 don't recall.

21 Q (By Mr. Gear:) Do you recall reviewing the
22 Georgia photo ID legislation in 2009?

23 A I probably did look at that, but I don't recall
24 exactly how I -- what analysis I made. I may have read
25 it, but I don't think I did an analysis or a breakdown as

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1 if it were a bill that I was interested in like that.

2 Q Would you agree that SB 362 was less restrictive
3 in Georgia with regard to photo ID legislation?

4 MR. SWEETEN: Objection; legislative
5 privilege. You can answer.

6 A Sitting here today, I couldn't give you an
7 accurate answer on that.

8 Q (By Mr. Gear:) Was there communication in the
9 Senate in 2009 related to possible support by conservative
10 House Democrats?

11 MR. SWEETEN: Read that question back.

12 (Court reporter read last question.)

13 MR. SWEETEN: Objection; legislative
14 privilege.

15 A I'm not aware one way or the other. I don't
16 recall if there was. There may have been. I don't know.

17 Q (By Mr. Gear:) Is it possible that you engaged
18 in such communication?

19 A Anything is possible, but I don't recall
20 engaging in those conversations.

21 Q Do you recall a discussion in 2009 related to SB
22 362 regarding Federal preclearance of the photo ID
23 legislation?

24 MR. SWEETEN: Objection; legislative
25 privilege. You can answer.

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1 A I'm sure there was something on the record with
2 regard to that, and I'm sure there were discussions with
3 regard to making attempts to pass legislation that would
4 satisfy the requirements of preclearance under Section 5.

5 Q And in supporting SB 362, did you believe that
6 it would have passed requirements for Federal
7 preclearance?

8 A Yes.

9 Q And why did you believe --

10 MR. SWEETEN: Objection; legislative
11 privilege on the last question as to his analysis. So go
12 ahead.

13 Q (By Mr. Gear:) Why do you believe SB 362 would
14 have passed Federal preclearance in 2009?

15 MR. SWEETEN: Objection; legislative
16 privilege as to his mental impressions of the legislation
17 session. Go ahead. You can answer.

18 A Well, you know, I'm going back several years,
19 but I think the analysis was the testimony that I heard
20 and the discussions that, you know, we had on the Senate
21 floor and in the committee of the whole.

22 You know, I felt the work done by my
23 staff and others -- I felt like that we had -- this bill
24 was appropriately crafted to be in conformance with the
25 requirements of the Voting Rights Act, and so I had that

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1 general confidence that it would pass a Federal
2 preclearance examination.

3 Q And when you say crafted in a way that would
4 pass Federal preclearance, what did you mean by that?

5 MR. SWEETEN: Objection; legislative
6 privilege. You can answer.

7 A Design.

8 Q (By Mr. Gear:) Design? What do you mean by
9 that?

10 A The provisions of the bill were appropriate in
11 satisfying the requirements of the Voting Rights Act.

12 Q Do you believe the provisions of the bill were
13 crafted in a way to require voters who were voting at the
14 polling place to prove who they say they are?

15 MR. SWEETEN: Objection; privilege. Go
16 ahead.

17 A I thought the requirements were fair, and I
18 thought that they were appropriate to protect the
19 integrity of the ballot box, which was my goal with
20 regard to voter ID registration. And so I looked at it
21 through that prism in my mind.

22 Is it fair? Will it address the problem?
23 And I believe that it did, and I believe that it would
24 do it within the requirements of the Voting Rights Act.

25 Q (By Mr. Gear:) And when you say fair -- and I'm

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1 sorry I keep going back to this -- but when you say fair,
2 is it fair to say that you believed it was fair?

3 A It would be fair to say it was fair.

4 Q Was it fair --

5 A I'm sorry.

6 Q -- because it allowed for both photo and
7 non-photo identification?

8 MR. SWEETEN: Objection; legislative
9 privilege.

10 A I think it had opportunities in there for
11 people to -- and I think we also appropriated funds, and
12 Senator Ogden had indicated that we would appropriate
13 funds to provide for voter ID or free voter ID or free
14 identifications.

15 And I think, holistically, with all of
16 the things that were involved, that it was fair to
17 require a photo ID, given all of the accommodations that
18 we were trying to make to address the concerns that
19 people were raising. And that's with 362.

20 Q And 362 also allowed for non-photo ID?

21 A It did, but that wasn't the equation in my --
22 or that wasn't a variable in my equation of fair.

23 I believed that, in my view, the
24 opportunity to acquire ID, in this day and age, was made
25 available through the legislative process, and I believe

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1 the photo process was fair in 362, and I felt like it
2 was in 218, as well, which were the two bills that we've
3 talked about.

4 Q So that begs the question: Do you believe that
5 the non-photo ID provisions of both 218 and 362 were fair?

6 MR. SWEETEN: Objection; asked and
7 answered.

8 A Well, I'm not saying they're not fair. I think
9 the non-photo ID provisions were fair, as well, but I
10 believe, standing alone, independently, the photo ID
11 options were also fair.

12 (Duncan Deposition Exhibit Number RD-11
13 marked.)

14 Q (By Mr. Gear:) I'm showing you what has been
15 marked as RD-11. I believe you've previously testified to
16 this as Duncan Exhibit 29 in your previous deposition
17 testimony. Can you identify this document for me?

18 A This appears to be Senate Bill 362.

19 Q Which was authored by Senator Fraser and others,
20 correct?

21 A Correct.

22 Q In turning your attention to page -- turn your
23 attention to Page 5. I just want to go through briefly
24 what SB 362 allowed.

25 Is it accurate that SB 362 allowed a

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1 driver's license or personal identification card issued
2 to the person by the Department of Public Safety that has
3 not expired or that expired no earlier than two years
4 before the date of presentation?

5 A Yes, sir.

6 Q Is it accurate to say that SB 362 allowed for a
7 United States military identification card that contains
8 the person's photograph? And I'm referring to Page 6,
9 Number 2.

10 A Yes, sir.

11 Q Is it accurate to say that SB 362 allowed for a
12 United States citizenship certification issued to the
13 person that contains the person's photograph?

14 A Yes, sir.

15 Q Looking at Number 5, is it accurate that SB 362
16 allowed for a license to carry a concealed handgun issued
17 to the person by the Department of Public Safety or a
18 valid identification card that contains the person's
19 photograph and is issued by an agency or institution of
20 the Federal Government or an agency, institution, or
21 political subdivision of the State?

22 A Yes, sir.

23 Q And is it your understanding that Provision 5 of
24 SB 362 would have allowed for student IDs issued by a
25 state institution within Texas?

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1 A Where is that?

2 Q I'm asking you to look at Section 5 of SB 362
3 and --

4 A What page would that be on?

5 Q I'm referring to Page 6, Section 6 -- Page 6,
6 Section 6 -- I'm sorry; I said Section 5 before --
7 Page 6, Section 6 of SB 362 would have allowed for a
8 valid identification card that contains the person's
9 photograph and is issued by an agency or institution of
10 the Federal Government, correct?

11 A Right.

12 Q And it would have allowed, under Section (b), an
13 agency -- a valid identification card that contains the
14 person's photograph and is issued by an agency,
15 institution, or political subdivision of the State,
16 correct?

17 A Yes, sir.

18 Q And that would have included student IDs issued
19 by a subdivision of the State?

20 A I think that's a reasonable interpretation.
21 Are you talking about a higher institution or something
22 like that?

23 Q Yes. And do you -- comparing that to HB 218 --
24 and you can certainly look at the exhibit, if you need
25 to -- but comparing that to HB 218, do you know the reason

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1 why the use of student ID cards was narrowed between 2007
2 and 2009?

3 And just to refresh your recollection, in
4 2009, it allowed for -- in 2007, it allowed for the use
5 of any student ID card. In 2009, it only allows for the
6 use of student ID cards issued by a state institution.

7 Do you have any understanding as to why
8 that use of student ID cards was narrowed?

9 A No.

10 Q Did you engage in any communications regarding
11 Provision 6 of SB 362 related to student ID cards?

12 A No. I believe there was probably some
13 discussion about that on the Senate floor with regard
14 to the committee of the whole testimony and in Senate
15 Bill 362.

16 Q Do you recall what that discussion was?

17 A I recall there was discussion, but I don't
18 recall what it was. The record would probably reflect it
19 more accurately than I could recall it.

20 Q Do you recall any reason given, during the
21 consideration of SB 362, regarding why student IDs were
22 narrowed to only being issued by a state institutions?

23 A I would have to refer to the record. I had no
24 part in that issue, in making that decision or drafting
25 that provision.

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1 Q So it's your testimony that you were not
2 involved in any communications related to the decision to
3 narrow that type of ID to State institutions?

4 A My testimony is that if I was, I don't remember
5 them, and if there was recollection -- my recollection is
6 more along the lines of there was discussion among the
7 members in the debate, which would be reflected in the
8 record.

9 Q Are you aware of any analysis -- and I'll use
10 that in the same term that I've used it in our discussions
11 with HB 218 and HB -- or SB 362. Are you aware of any
12 analysis that was conducted related to student IDs by the
13 Senate?

14 A Well, I'm trying to understand what you mean by
15 "analysis," because I don't think we've ever really
16 clearly defined what that means, because an analysis
17 could mean 15 different things to each person when
18 they're -- and so give me your definition that you want
19 me to try to give you an answer around, and I'll see what
20 I can do with it.

21 Q Let's see if we can do that.

22 A Okay.

23 Q For HB -- Actually, in 2006, you indicated that
24 there was an interim report --

25 A Right.

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1 Q -- that was conducted. And would you consider
2 that an analysis?

3 A To an extent, it was more of a -- it was a
4 report. It was designed to provide information to help
5 members understand the issues that are involved in voter
6 ID.

7 It reported different studies and
8 analyses that were done by the Carter-Baker Commission
9 and other things that were considered or other studies,
10 Court opinions that had an analysis in them. It
11 referred members to different resources that they could
12 use in performing an analysis of the issues.

13 And that was the primary purpose of that
14 report and the primary purpose of any report that I
15 authored as chairman of the committee, but, in
16 particular, I recall on that one, because we did have a
17 hearing on it, and I recall there was -- there were a
18 lot of questions and issues raised on voter ID at that
19 time.

20 Initially, that was when it appeared to
21 me that it was -- you know, there was certainly people
22 that needed information about what other analyses that
23 were out there, and that is what we tried to provide in
24 that report --

25 Q So --

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1 A -- on both sides of the issue.

2 Q I'm trying to define the issue of analysis.

3 A Uh-huh.

4 Q If I rephrased it and asked you, were there any
5 reports specifically completed by the Senate, designed to
6 assist the legislator in understanding student IDs, would
7 you understand what I'm asking you?

8 A Yeah.

9 Q Were there any reports completed by the Senate
10 designed to assist legislators in understanding student
11 IDs -- the issues related to student IDs in 2009?

12 A Not that I'm aware of.

13 Q Were there any reports designed to assist
14 senators in understanding whether there were prosecutions
15 of individuals who used student IDs and attempted to
16 impersonate someone else at the polls in 2009?

17 MR. SWEETEN: Objection; legislative
18 privilege. You can answer.

19 A As it relates specifically --

20 Q (By Mr. Gear:) To student IDs.

21 A -- to student IDs? I'm not aware of any.

22 Q And the answer is: No, you're not aware of any?

23 A Correct.

24 Q Were there any reports designed to assist
25 senators in understanding whether or not there were any

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1 noncitizens that were prosecuted for using a student ID at
2 the polling place in 2009 related to SB 362?

3 MR. SWEETEN: Same objection.

4 A I'm not aware that that specific issue was the
5 subject of any report.

6 Q (By Mr. Gear:) And that specific issue being
7 noncitizens voting at the polls, correct, --

8 A Right.

9 Q -- and using student IDs?

10 A Right.

11 THE WITNESS: I'm getting about to that
12 range again whenever you're ready.

13 MR. GEAR: That range?

14 MR. SWEETEN: Break range.

15 MR. GEAR: Let's go off the record.

16 (Short break taken.)

17 Q (By Mr. Gear:) So I would like to return
18 briefly to Senator Van de Putte's March 3rd, 2009 record,
19 which we identified as exhibit -- is it RD-9?

20 A RD-9.

21 Q Focusing again on Number 2, with our
22 understanding of what I mean when I reference the term
23 "analysis," I want to ask you: Were there any reports --
24 Are you aware of any reports that were created within the
25 Senate to assist senators in understanding the effect on

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1 minority voters protected under the Voting Rights Act?

2 A I don't think that was anything that was
3 generated as the work of the Senate. As the author of
4 the analysis, I assume that there was evidence put in by
5 expert witnesses at the hearing that they touted as an
6 analysis, but I don't remember specifically about that.

7 I know there was a lot of discussion.
8 The record would reflect the details on that.

9 Q Do you recall if the testimony by the experts
10 was by opponents or supporters of the SB -- I'm sorry --
11 of SB 362?

12 A I would assume the opponents, and perhaps the
13 proponent experts, as well. I don't recall. The record
14 would probably reflect that better.

15 Q As you sit here today, do you recall any
16 testimony by supporters of SB 362 that would have
17 supported that there would not be an impact on the
18 minority voters as it relates to the Voting Rights Act --
19 protected under the Voting Rights Act?

20 MR. SWEETEN: Objection; vague. Go ahead.

21 A I believe the record would reflect that there
22 were proponents of the bill that supported -- there were
23 witnesses who were proponents of the bill that
24 reflected -- would you repeat your question? I've lost
25 my train of thought in the question.

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1 Q (By Mr. Gear:) We were specifically -- We were
2 speaking specifically of the effects on minority voters
3 protected under the Voting Rights Act.

4 A Right.

5 Q My question previously was: Are you aware of
6 any testimony by supporters of SB 362 that would support
7 facts that SB 362 would not have any effect on minority
8 voters protected under the Voting Rights Act?

9 A Sitting here today, I don't recall specific
10 testimony. I seem to be impressed that there was a
11 record, and it would reflect whether or not there was.

12 Q And do you recall responding to Senator Van de
13 Putte's March 3rd, 2009 letter?

14 A Yes, sir. Yes, sir.

15 Q Do you recall whether you addressed the issue
16 that she raised regarding her request for a detailed
17 analysis on the effects on minority voters protected under
18 the Civil Rights Act?

19 A I would have to see the response. I think I've
20 got it here.

21 Q Did I hand it to you?

22 A Yes.

23 Q Okay. Is that one page or two? I've handed you
24 the wrong document.

25 (Duncan Deposition Exhibit Number RD-12

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1 marked.)

2 Q (By Mr. Gear:) Let me hand you what has been
3 marked as RD-12.

4 MR. GEAR: And for the record, this was
5 previously identified as Senator Duncan Exhibit 527.
6 It's also identified as Exhibit 13 on the bottom and
7 Bates-stamped USA 00033765.

8 Q (By Mr. Gear:) Can you identify that document
9 for me, please?

10 A It is a memorandum to Leticia Van de Putte,
11 Senator Van de Putte, from me, with a copy to Senator
12 Fraser dated March 5th, 2009.

13 Q And so, specifically, my question to you was:
14 Did you respond within that memorandum, as you have
15 described it, to Senator Van de Putte's concern that there
16 be a detailed analysis to determine the effect on minority
17 voters protected under the Civil Rights Act?

18 A Let me review it.

19 Q Sure. Take your time.

20 A (Witness reviewing document.) I don't believe
21 that this letter says -- dissects her letter to the
22 extent of any analysis that -- you know, or any
23 requirement, and I don't believe her letter asks for the
24 Senate to do a detailed analysis.

25 I believe her letter basically indicates

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1 that it needs to consider a detailed analysis, but it
2 doesn't require or call for us to do that, at least the
3 way I read it.

4 And it may be just a grammatical
5 interpretation on my part, but I don't think so. I
6 think, basically, she's saying that the Texas Senate
7 should be as clear of any identifiable problems, to be
8 clear of the perils, and have a detailed analysis, which
9 is grammatically kind of basically a little bit
10 improper, I guess.

11 But it does not -- that sentence does not
12 call for the Texas Senate to do the detailed analysis.
13 And so the way I look at these things is like I look at
14 any other bill.

15 It's that the person who wants to pass
16 the bill needs to bring its proponents and its detailed
17 analysis in support, and those who are opposed, they
18 need to bring their witnesses and their detailed
19 analysis in opposition.

20 And so I believe that what this indicates
21 happened here was that, as chairman, I would rely upon
22 her to bring whatever witnesses that she believed would
23 be compelling witnesses and whatever evidence, including
24 evidence of the detailed analysis, that would be
25 important to support any complaint that she or any other

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1 member had that might -- that would indicate -- or any
2 complaint relative to minority voter impact.

3 And I think the record reflects that
4 there were witnesses that were brought --

5 Q By the opponents?

6 A -- by the opponents, that laid that out. And I
7 can't recall whether or not -- the specific details of
8 what the proponents brought or what that evidence was.

9 Q But, as you sit here today, you're not aware of
10 any specific testimony by the supporters or the proponents
11 of SB 362?

12 A I would phrase it this way: The record will
13 reflect that. I don't -- I'm not pulling -- recalling
14 anything, just merely because I haven't reviewed the
15 record in whole, and it's a long record.

16 Q Sure.

17 A And I have not reviewed it in preparation for
18 today.

19 Q So I want to go back to SB 362, the actual
20 provisions, which are still in front of you, I believe.

21 A Yes.

22 Q And we are on Page 6. And I believe it was your
23 testimony that you did interpret SB 362, Paragraph 6(b),
24 to include student IDs issued by state institutions,
25 correct?

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1 A I think I said that was a reasonable
2 interpretation.

3 Q Do you agree with that interpretation?

4 A I don't disagree with it.

5 Q And you voted in favor of all of the provisions
6 under SB 362, correct?

7 A Yes.

8 Q Are you aware of any reason why this provision
9 narrowed from -- as compared to SB 218 -- narrowed the
10 types of student IDs that would be allowed under photo ID
11 legislation?

12 A No, sir.

13 Q Are you aware of any communications related to
14 that issue outside of the public record? And I'm
15 referring to --

16 A No.

17 Q I'm referring to legislation.

18 A I'm sure there was discussion on the record. I
19 remember there was discussion on the record, but I don't
20 remember what the details of it were. But I know it was
21 brought up, and I know it was discussed. I just don't
22 know who did it and who discussed it or who raised the
23 issue and how it was handled with regard to the
24 discussion or justification for the change.

25 Q And, again, under Paragraph 6(a), it allowed --

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1 it being SB 362 -- allowed for an agency or institution of
2 the Federal Government -- a photo ID from an agency or
3 institution of the Federal Government, correct?

4 A Right.

5 Q Are you aware of any reports designed to assist
6 the Senate in understanding issues as it relates to a
7 valid identification card that contains a photograph
8 that's issued by an agency or institution of the Federal
9 Government as it relates to photo ID legislation?

10 A I lost you. I'm sorry.

11 Q And I'm sorry. That was terribly garbled. I
12 guess what I'm trying to ask you is: As we understand
13 analysis now, in the way that you characterize it, as
14 reports designed to assist legislators in understanding
15 various issues related to photo ID legislation, I'm
16 specifically asking you if there were any reports designed
17 to address the concerns and assist senators in
18 understanding the concerns related to photo ID issued by
19 an agency or institution of the Federal Government.

20 A I don't want to split hairs with you on the
21 definition of analysis, but I will say this: I'm not
22 aware of any reports that were prepared in the Senate or
23 by any member or presented that dealt specifically with
24 the issue of student IDs. There may have been, but I
25 certainly don't recall, and I doubt that there was.

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1 And the record may prove me wrong on
2 that, but --

3 Q And would that also be true for reports that
4 dealt specifically with the issue of photo IDs issued by
5 an agency or institution of the Federal Government?

6 A Right.

7 Q Would you see any problem including within photo
8 ID legislation with student IDs issued by a private or
9 state institution within the State of Texas?

10 MR. SWEETEN: Objection, vague and
11 legislative privilege. You can answer.

12 Q (By Mr. Gear:) Let me rephrase that so it's
13 clear.

14 Would you have supported a provision in
15 photo ID legislation that would have allowed for photo
16 identification -- student photo identification issued by
17 either a state or private institution within the State of
18 Texas had it been included in SB 14?

19 MR. SWEETEN: Objection, incomplete
20 hypothetical; and objection, legislative privilege. You
21 can answer.

22 Q (By Mr. Gear:) Do you understand my question?

23 A Yeah. As one of 31, you know, it provided
24 the -- it provided that the authenticity of the ID could
25 be self-proved, I guess is the way to put it. I mean, as

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1 long as it was -- had that -- the ID would be a valid --
2 one that would be regularly recognized as authentic, you
3 know, as one of 31, I probably would have objected to
4 that.

5 Q So you would not have supported that?

6 A I would --

7 MR. SWEETEN: Same objection.

8 A I said I would not have been -- I would have
9 supported that if that -- as long as it was --

10 Q (By Mr. Gear:) Thank you for that
11 clarification.

12 A -- something that can be authenticated, not
13 just open-ended.

14 Q Would that also be true for Federal
15 identification issued by -- let me get the language
16 correct here.

17 Referring specifically to SB 362, would
18 you have supported a valid identification card that
19 contains a person's photograph and issued by an agency or
20 institution of the Federal Government had it been
21 included in SB 14 --

22 MR. SWEETEN: Objection.

23 Q (By Mr. Gear:) -- as provided in this
24 Provision 14?

25 MR. SWEETEN: Objection; legislative

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1 privilege.

2 A As one of 31, I probably would have
3 supported -- I would have supported that legislation that
4 would have required that.

5 Q (By Mr. Gear:) Do you have any -- As you sit
6 here today, do you have any facts that would support
7 removing or excluding these provisions from SB 14?

8 MR. SWEETEN: Objection, vague; objection,
9 legislative privilege. You can answer.

10 Q (By Mr. Gear:) Well, let me clarify, because I
11 don't want this to be vague.

12 SB 14 does not include photo IDs issued by
13 an agency --

14 MR. GEAR: Let me strike that.

15 Q (By Mr. Gear:) SB 14 does not include a valid
16 identification card that contains the person's photograph
17 and issued by an agency or institution of the Federal
18 Government, correct?

19 A I believe that's correct.

20 Q Do you have any facts that support why photo
21 identification issued by an agency or institution of the
22 Federal Government was excluded in SB 14?

23 MR. SWEETEN: Objection; privilege. You
24 can answer.

25 A I wasn't involved in the decision to exclude

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1 it. There may be something on the record. So I couldn't
2 give you an accurate answer on that.

3 Q (By Mr. Gear:) Were you involved in any
4 communications related to concerns pertaining to valid
5 identification cards that contain a person's photograph
6 that were issued by an agency or institution of the
7 Federal Government?

8 MR. SWEETEN: Objection; legislative
9 privilege. You can answer.

10 A Not that I recall, other than what discussions
11 and communications that occurred in debate on the Senate
12 floor, either in the committee as a whole or as
13 reconvened by the Senate.

14 Q (By Mr. Gear:) So, as you sit here today, are
15 you aware of any facts that support a reason why it should
16 be included or why it was excluded from SB 14?

17 MR. SWEETEN: Objection, asked and
18 answered; objection, legislative privilege. You can
19 answer.

20 A I'll refer to the record on that.

21 Q (By Mr. Gear:) And I'm not necessarily asking
22 about the record. I'm asking, as you sit here today, do
23 you -- are you aware of any reason why --

24 A You're talking about my own opinion?

25 Q Yes.

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1 A You know, --

2 MR. SWEETEN: Objection to privilege. Go
3 ahead. I'm sorry.

4 A I haven't thought about it until today. So I
5 don't -- you know, I don't know. I mean, my answer would
6 be purely assumption as to the ability to verify whether
7 or not the ID was authentic or not. That's my
8 assumption, pure swag, whatever you want to call it, as
9 to the reasons behind it.

10 But I think it probably is developed in
11 the record, and my opinion didn't weigh in on that, one
12 way or the other, so --

13 Q (By Mr. Gear:) As you sit here today, are you
14 aware of any information that would have supported
15 excluding student IDs from a private institution from the
16 provisions of SB 362?

17 MR. SWEETEN: Objection --

18 A No.

19 MR. SWEETEN: -- legislative privilege;
20 objection, asked and answered. You can answer.

21 A No.

22 Q (By Mr. Gear:) And I believe I asked you if
23 you were aware of any facts that supported exclusion from
24 SB 14, but now I'm asking you specifically about SB 362.

25 And prior to the institution of IDs with

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1 the photo -- student IDs, with the photo, are you aware
2 of any facts that support why private student IDs with a
3 photo were excluded from SB 362?

4 MR. SWEETEN: Same objection.

5 A Students from private institutions?

6 Q (By Mr. Gear:) Yes.

7 A No, I'm not aware of those reasons.

8 Q And it's fair to say that there was no
9 report designed to assist legislators in the Senate to
10 determine --

11 MR. GEAR: Strike that.

12 Q (By Mr. Gear:) Is it fair to say that there
13 were no reports designed to assist legislators in the
14 Senate to understand concerns related to student IDs --

15 MR. SWEETEN: Objection; vague. I'm
16 sorry. Go ahead, Bruce, finish. I didn't want to
17 interrupt your question. Go ahead.

18 Q (By Mr. Gear:) -- related to SB 362?

19 MR. SWEETEN: Objection, legislative
20 privilege; objection, vague. You can answer.

21 A Not that I'm aware of.

22 Q (By Mr. Gear:) Do you recall, during the
23 consideration of SB 362, that the issue of illegal aliens
24 and noncitizens was raised on the Senate floor?

25 A You would have to refer to the record on that.

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1 Q Well, specifically, I would like to know if you
2 have any recollection of Senator Fraser raising the issue
3 of noncitizens or illegal aliens voting?

4 A As I sit here today, in August of 2014, I do
5 not have specific independent recollection. I would have
6 to refer to the record with regard to that.

7 Q Were you or your staff involved in any
8 communications related to SB 362 regarding the issue of
9 insuring that illegal aliens or noncitizens were not
10 voting at the polling place?

11 A You know, I'm going to be -- I'm not trying to
12 be coy. I do not remember specific conversations about
13 that issue among my staff.

14 We were primarily concerned with process
15 at that point in time. I didn't design the bill. And
16 if there were conversations about that, they were
17 certainly on the record, and I don't recall specifically
18 any of those internally.

19 Q And just to round that out, is it also your
20 testimony that you don't recall any specific testimony
21 with other legislators related to the issue of noncitizens
22 and illegals voting at the poll?

23 A No, I don't, but, I mean, it has been seven
24 years ago or six or five or however many years. So, you
25 know, if that issue came up, I don't recall discussing

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1 that.

2 I recall other reasons for being
3 concerned about the ballot integrity. And so that's my
4 frame of reference.

5 Q What reasons do you recall related to SB 362 --

6 MR. GEAR: Strike that.

7 Q (By Mr. Gear:) Do you recall what the purpose
8 of SB 362 was?

9 A The purpose of the bill was to preserve ballot
10 integrity and to prevent people from just basically
11 harvesting voter ID cards or voter registration cards and
12 using them to influence primary and general elections,
13 because -- under the provisions of the law.

14 Before we changed it, all a person had to
15 do was present a voter registration card that entitled
16 them to vote. There was no way to verify whether that
17 person was the person represented on the card.

18 Likewise, there's no way to prove or
19 provide any sort of enforcement with regard to whether
20 or not the person who is presenting the voter
21 registration card, representing that they are the person
22 entitled to vote, was, in fact, that person.

23 And so the concerns that I was honed in
24 on was to stop that type of voter fraud that is almost
25 impossible to enforce against.

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1 Q So you've said a number of things in that
2 statement.

3 THE WITNESS: Can I get a glass of water?

4 MR. SWEETEN: I'll get it.

5 Q (By Mr. Gear:) So you've talked about vote --
6 in your testimony, you've discussed vote harvesting of
7 voter registration cards, correct?

8 A (Witness nods head.)

9 Q Are you aware of any facts that will support
10 that there was vote harvesting -- prosecution of voter
11 impersonation at the polls of a person who was involved in
12 harvesting voter registration cards?

13 MR. SWEETEN: Objection; compound, asked
14 and answered. You can answer.

15 A I don't know how you prove it, because you
16 can't -- if you can't require identification, then you
17 can't -- you can't develop evidence sufficient to
18 prosecute. And the volunteers or the minimum wage
19 workers that work at the polls are certainly not law
20 enforcement and capable to enforce it.

21 And in politics, you get aware of people
22 that do those kinds of things. History tells us that
23 those things are done. If you have -- If you read
24 history, you read Box 13, Stevenson and LBJ, and you
25 know that it happens.

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1 And until you have the ability to -- and
2 the simplest way to avoid that from happening is to
3 require that the person who presents themselves to vote
4 verify that they are the person on that card or that
5 they're able to do it.

6 That is my simple, sole reason for
7 supporting Senate Bill 218 -- or House Bill 218, 362,
8 Senate Bill 362, and Senate Bill 14, I think.

9 Q (By Mr. Gear:) SB 14.

10 A SB 14.

11 Q And I understand your answer, and I understand
12 that you're concerned that there is difficulty in proving
13 voter fraud at the polls.

14 But my specific question was: Are you
15 aware of any prosecutions related to voter impersonation
16 as a result of vote harvesting at the polling places in
17 Texas?

18 A I believe that -- there are prosecutions, I
19 know. I don't -- I can't drill down and have not drilled
20 down into those to be able to give an answer to that, but
21 I do know there have been prosecutions.

22 I don't know if they had the vote
23 harvesting components to it, but, in my view, that
24 was -- in my view, that's a risk that we have with the
25 current system of -- or the old system where you were

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1 not required to verify that you were the person; that
2 the voting person was the person that was registered on
3 that card.

4 Q So, as you sit here today, and as you debated SB
5 362 or --

6 MR. GEAR: Strike that.

7 Q (By Mr. Gear:) Any voter photo ID
8 legislation -- are you aware of a measurable number of
9 prosecutions for voter impersonation at the polling
10 places --

11 MR. SWEETEN: Same objection.

12 Q (By Mr. Gear:) -- in Texas?

13 A I think I've just answered it. I think the
14 Attorney General -- I think, in the record that you have,
15 that was presented either in our report in 2006 or in the
16 legislative record on Senate Bill 362, maybe 14 -- I
17 don't know -- I think there was evidence that there was
18 prosecutions of voter fraud, and I assume that's voter
19 impersonation.

20 Probably, mail fraud is an area where it
21 seems like there was a lot of concern as well, you know,
22 mail-in ballots as well. But, again, that's my
23 recollection.

24 Q So let's just address the issue of mail fraud.
25 Looking at SB 362, the provisions of SB 362, is it fair to

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1 say that there is nothing within SB 362 which would have
2 addressed the issue of by-mail voter fraud?

3 MR. SWEETEN: And feel free to review.

4 Q (By Mr. Gear:) Feel free to review and take
5 your time.

6 A (Witness reviewing document.)

7 MR. GEAR: And for the record, Senator
8 Duncan is referring to the provisions of SB 362, --

9 THE WITNESS: Yes, sir.

10 MR. GEAR: -- which is identified as
11 RD --

12 THE WITNESS: 11.

13 MR. GEAR: -- 11.

14 A (Witness reviewing document.) You know, I
15 don't think there is anything in here that specifically
16 deals with -- directly deals with mail fraud. I think
17 there may be some general things about voter education
18 and things like that, but I don't know if that applies to
19 mail fraud or not.

20 It's more like -- I think the bill is
21 primarily focused here on, as we discussed earlier, the
22 personal voter --

23 Q Impersonation?

24 A -- voter presentation at the ballot box and not
25 as to mail fraud.

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1 Q I spoke over you, and I want to make sure that
2 it's clear.

3 Do you agree that SB 362 deals with
4 in-person voting at the polling place?

5 A Yes, sir.

6 Q And do you agree that SB 362 deals with voter
7 impersonation at the polling place?

8 A Yes.

9 Q Do you know if there is any --

10 MR. GEAR: Strike that.

11 Q (By Mr. Gear:) Can you tell me what, if
12 anything else, SB 362 deals with related to voter fraud?

13 A I think primarily voter impersonation is the
14 issue.

15 Q Are you aware of any elections in the State of
16 Texas that were altered or were altered as a result of
17 voter impersonation at the polls?

18 A I'll be consistent with what I said earlier. I
19 don't know how you know, because you would have no
20 enforcement mechanism under the old law, because now the
21 new law requires that the voter verify his identity,
22 consistent with his voter registration. You know, you
23 would be able to show that.

24 It's a deterrent to that occurring, as
25 well. And so I just don't know how you would -- you

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1 know, it would be very difficult to prove. And so, you
2 know, I'm saying I can't -- I can't tell you that I'm
3 familiar with a specific instance of that.

4 Q And in 2009, during the consideration of SB 362,
5 was there a measurable number that you recall regarding
6 the number of prosecutions of in-person voter
7 impersonation at the polls?

8 A There was a number of in-person prosecutions.
9 I can't classify them as to what the violations were, but
10 I think the record would have that.

11 Q And if I were to tell you that record reflected
12 that there were zero prosecutions of voter impersonation
13 at the polls, as of 2009, would you have any reason to
14 dispute that?

15 A I --

16 MR. SWEETEN: Objection; assumes facts
17 not in evidence.

18 A I don't know what -- I couldn't dispute it or
19 not dispute it. I wouldn't surprise me, because I know
20 it's something that would be difficult to prove.

21 Q (By Mr. Gear:) And in voting for SB 362, did
22 you believe that the provisions within that SB 362 were
23 sufficient to identify a person at the polling place?

24 A Yes, I thought they were. You know, I think
25 the Senate bill I voted for, I supported it. So, yes, I

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1 did.

2 MR. GEAR: Do you want to take a lunch
3 break now?

4 (Off the record discussion ensued; lunch
5 break taken.)

6 Q (By Mr. Gear:) We're back on the record. So,
7 before we went off the record, you were discussing some of
8 the difficulties of identifying voter impersonation at the
9 polls. Do you recall that?

10 A Yes.

11 Q And one of the points that you raised was: It
12 would be difficult for poll workers to identify
13 impersonation at the polls. Do you recall that testimony?

14 A I do.

15 Q What steps or what reports or analysis did you
16 or your staff conduct to determine if that position was
17 actually based in fact?

18 A Well, I think, just anectodally, you know, you
19 think through issues. When you represent a big district
20 like I do, you go around, and you talk to people. And I
21 had 51 counties. At that time, I think I had 46.

22 And voter ID and that sort of thing was a
23 big issue, and people would talk about that. They
24 wouldn't talk about it in specific, "I saw this, or I
25 heard that, and you can do this."

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1 And one example that was given was if
2 somebody presented their wife's -- to vote with their
3 wife's card, that even they couldn't be turned down to
4 vote. I don't know if that's true or not, but it kind
5 of registers the fact that how would we expect the poll
6 workers to really know whether John Doe is John Doe and
7 whether or not there is fraudulent activity going on
8 with that.

9 And then we heard -- at least off the
10 record -- but I heard of anecdotal testimony where
11 people would harvest cards -- harvest cards and actually
12 market them, and that was a concern that I had, but,
13 generally, that was a common sense concern that I had.

14 And it seemed to me that requiring
15 identification to vote was a fairly -- was a fair way to
16 go about enforcing the requirement that you be
17 registered, and that you be the person that's on the
18 registration before you're allowed to vote.

19 Q As you sit here today, do you recall the names
20 of any election judges you may have spoken to?

21 A No, no. I don't think I talked to election
22 judges. I think I talked -- it may have been I didn't
23 talk to them in that capacity, just generally, when you
24 go out and you represent a district and you're doing your
25 job and you're speaking with your constituents.

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1 And, you know, you also look and see --
2 we were also -- I was aware of the polls that basically
3 reflect very strong support among our constituents for
4 some way to enforce our -- you know, some sort of voter
5 identification.

6 Q And you said "polls." I'm sorry?

7 A Right. Just general polls that we were aware
8 of. I didn't do any in my district, but things that were
9 done generally.

10 Q Do you legislate based on polls?

11 A Not normally.

12 Q Now, were you aware that election judges at the
13 polling places actually do have certain law enforcement
14 privileges? They have the power to arrest if they believe
15 that fraud had been committed?

16 A Well, taking that as true, I've been to the
17 polls.

18 Q Okay.

19 A And I see that reality is different, and that's
20 never going to happen or not going to happen unless --
21 and if it does happen, it's going to be very -- it's
22 going to be a very difficult situation for someone who
23 probably is not trained in law enforcement or the ability
24 to do -- to safely detain someone who they suspect is a
25 fraudulent voter.

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1 And that's a pretty risky thing anyway if
2 you look at a lot of the -- you know, persons are
3 exposed when they do that, and if they're wrong, to a
4 liability. So I would say that that would be a very --
5 I don't see that as a -- or I see that as a real issue
6 and a problem.

7 And I see that based on my own experience
8 of voting of seeing that there would be no way, at least
9 no practical way, reasonable way, or a reasonable
10 expectation that a poll worker or an election judge
11 would be able to effectively enforce the voter laws.

12 And the easiest nonintrusive way to do
13 that is just basically to say, "Identify yourself."

14 Q Are you also aware that candidates are allowed
15 to have poll watchers in the polling place?

16 A I am.

17 Q And have you -- as an elected official, have you
18 ever used poll watchers in a polling place?

19 A No.

20 Q Are you aware that there was an effort by the
21 Texas Attorney General's Office to identify voting fraud
22 in the polling place?

23 A No.

24 Q Are you aware that the Texas Attorney General's
25 Office expended money in an effort to identify voter fraud

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1 in the State of Texas?

2 A I don't know exactly in what context you're
3 talking about.

4 Q Well, let me clarify that.

5 A I need a foundation.

6 Q Are you aware that the Attorney General's Office
7 created a special investigations unit?

8 A I'm aware of that.

9 Q And that one of the tasks of the special
10 investigations unit was to receive referrals from the
11 Secretary of State's office and other local prosecutors,
12 and in some cases, citizens regarding voter fraud?

13 A Well, I'm not familiar with the specific
14 details of the task force.

15 Q But you are familiar with the task force?

16 A Generally, their existence.

17 Q Are you aware that poll watchers have the
18 ability to challenge a voter's -- a voter in the polling
19 place, and that challenge would be issued directly to the
20 election judge?

21 A Yes.

22 Q Are you aware of -- and you indicated that you
23 had been at the polls before. I suspect you had been
24 there to vote, correct?

25 A Yes.

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1 Q Have you ever worked as a --

2 A No.

3 Q -- poll official?

4 A No.

5 Q Have you ever spent any significant time in the
6 polling place, to observe polling place activities?

7 A Yes.

8 Q And in what capacity?

9 A Standing in line, waiting to vote.

10 Q So, other than standing in line, you haven't
11 worked at the poll --

12 A No.

13 Q -- as a poll watcher; you have not worked as an
14 election judge; you have not worked at the poll --

15 A Correct.

16 Q -- as a poll worker?

17 A That's right.

18 Q And you have not, based on your recollection,
19 spoken directly to any election judges regarding their
20 ability to identify in-person voter fraud at the polling
21 place?

22 A I think we had some testimony to that effect.
23 I can't recall specifically. The record would reflect
24 that, if we did.

25 Q But, as you sit here today, you don't recall

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1 that testimony?

2 A Right.

3 Q I want to show you what has been previously
4 marked as RD-10 in this deposition, and I'll direct your
5 attention to Number 1. And I understand that you do not
6 recall seeing this document.

7 So I would like you to just focus on the
8 last sentence of Number 1.

9 A Could you tell me who prepared it?

10 Q I don't know. If you could tell me --

11 A I don't know. I don't know what the source is.

12 Q So --

13 A I guess what source -- what is the source of
14 RD-10?

15 Q It's marked as highly confidential, and it was
16 produced by the State of Texas as TX 00087008. But, I
17 mean, I can accept your testimony if you don't know who
18 authored this document.

19 A Okay.

20 Q And you don't know -- if you don't know who
21 authored the document, I understand that testimony.

22 So, not introducing this for the
23 authenticity of the document, I would like to explore
24 your knowledge about concerns related to SB 362, possibly
25 disenfranchising elderly, poor, or minority voters.

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1 Were you involved in any communications
2 with any legislators that expressed concern that SB 362
3 may possibly result in the disenfranchisement of elderly,
4 poor, or minority voters.

5 A Generally, as the bill was debated on the
6 Senate floor, and I would assume as the special order
7 provision was also debated on the Senate floor, in
8 2009 -- are we talking about that 2009?

9 Q SB 362. Correct.

10 A So I would assume that that was -- I know those
11 discussions took place on the Senate floor. I don't
12 recall specifically what they were, but the record will
13 reflect that.

14 Q And what, if any, reports or analyses or steps
15 did you or your staff take specifically to address the
16 concerns that SB 362 may result in the disenfranchisement
17 for elderly, poor, or minority voters?

18 A We followed up with our role, to make sure we
19 had a hearing that allowed the opponents and proponents
20 of the legislation to bring evidence before the body, so
21 the body could deliberate on that evidence, weigh it, and
22 make a decision.

23 Each individual member of the Senate
24 could make that decision if that was appropriate for its
25 constituent in its own judgment.

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1 Q So, other than the hearing itself and the
2 ability to bring witnesses from either side, is it your
3 testimony that you're not aware of any specific reports
4 that address this issue?

5 A Other than what's in the record.

6 Q So I'm not -- I can't remember if we have
7 discussed this on the record, but do you recall that
8 SB 362 -- that there was a motion during the consideration
9 of SB 362 to suspend the regular order of business to
10 take up SB 362?

11 A No, I don't. Are you asking me: Do I remember
12 or --

13 Q Do you recall? Do you remember?

14 A No, I don't.

15 Q Do you remember if SB 362 was heard in the
16 State Affairs Committee or in the committee of the whole?

17 A 362 was the committee of the whole.

18 Q And I may have asked you this already.

19 A All right.

20 Q Do you know who proposed the motion to suspend
21 the regular order of business to take up 362?

22 A I don't know that it would have required
23 suspending the regular order of business, because it was
24 a special order.

25 Q And who introduced the special order?

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1 A I think that that was Senate Joint
2 Resolution 14.

3 MR. GEAR: Let's go off the record for a
4 second.

5 (Off the record discussion ensued.)

6 MR. GEAR: Back on the record.

7 Q (By Mr. Gear:) We had a brief conversation, and
8 there was a clarification, and thank you for that.

9 Can you tell me why SB 362 was considered
10 by the committee of the whole?

11 MR. SWEETEN: Objection; legislative
12 privilege. You can answer.

13 A The special order -- The rule that was --
14 Rule 5.11(d) allowed for the -- called for or required
15 a committee of the whole's consideration of voter
16 identification and legislation, if it was to be
17 considered as a special order under that rule.

18 And so I assume that the Lieutenant
19 Governor then referred it to the committee of the whole
20 in accordance with Rule 5.11(d). I think that's the
21 rule.

22 Q And other than SB 362 and SB 14, are you aware
23 of any other photo ID legislation that was referred
24 directly to the committee as a whole?

25 A I don't know that there was. I don't think

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1 there was.

2 Q Are you aware of any other specific legislation
3 that was referred directly to the committee of the whole?

4 MR. SWEETEN: I want to be clear, Bruce.
5 You're talking about '09; in '09?

6 MR. GEAR: I am talking about '09.

7 MR. SWEETEN: All right.

8 MR. GEAR: Thank you for that
9 clarification.

10 A Not that I recall.

11 Q (By Mr. Gear:) What about in 2011 during the
12 consideration of SB 14? Do you recall any other --

13 A I do not recall that there was any. There may
14 have been, but I don't recall if there was.

15 Q Did you --

16 MR. GEAR: Strike that.

17 Q (By Mr. Gear:) Are you aware if the Secretary
18 of State's office conducted an analysis or prepared a
19 report to determine the number of Spanish surname
20 registered voters who lacked the required SB 14
21 identification?

22 A If they did, it would probably be in the
23 record. I don't have independent recollection of it, but
24 they may have. I know they did testify at the hearing.

25 Q Did you or your staff engage in any

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1 communications with the Secretary of State's office to
2 determine if they maintained voter registration by Spanish
3 surname?

4 A I didn't personally. It would not surprise me
5 if my staff did, in the regular course of preparing bills
6 or following up on requests from other members to have
7 information brought before the committee of the whole --

8 Q Would you --

9 A -- or even in 218.

10 Q Would you direct your staff to seek that type of
11 information?

12 MR. SWEETEN: Objection; calls for
13 speculation.

14 Q (By Mr. Gear:) Well, let me clarify. I'm
15 asking you specifically: Would you have directed your
16 staff to seek information specific to voter registration
17 Spanish surname data?

18 MR. SWEETEN: I'm still going to object on
19 speculation, because you're asking him to say if -- it's
20 a hypothetical. Would you have -- I mean, the
21 question -- if the question --

22 Q (By Mr. Gear:) Did you --

23 MR. SWEETEN: "Did you," I think, that's
24 fair.

25 Q (By Mr. Gear:) Let me restate the question.

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1 Did you direct your staff to seek information related to
2 voter registration information based on Spanish surname
3 data?

4 A I don't remember if I did specifically. That's
5 something that -- you know, I have a very competent
6 staff -- that they probably did that on their own without
7 asking, I mean, if they needed it or if it was requested.

8 You know, I could have, but I don't
9 recall doing it specifically.

10 Q Do you recall if Jennifer Fagan sought that
11 information?

12 A I do not. I cannot speak for that. I do not
13 know, sitting here today.

14 Q Do you recall reviewing information related to
15 voter registration based on Spanish surname data?

16 A It seems to me that in the hearing of the
17 committee as a whole, that evidence was brought forth,
18 but I can't accurately testify to that. It would be in
19 the record, if it was.

20 Q And just so the record is clear, do you recall
21 that being brought forth in 2009?

22 A I think, if it was -- you know, it would occur
23 to me that it was, but, you know, again, I'm having a
24 vague recollection that there was -- that that was a
25 discussion that took place.

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1 And it was in 2008. And the record will
2 reflect more accurately than what my memory would serve.

3 MR. GEAR: I only have one copy of this,
4 but let me mark this for the record. I'm going to mark
5 this as RD-13.

6 (Duncan Deposition Exhibit Number RD-13
7 marked.)

8 Q (By Mr. Gear:) I'll give you a chance to look
9 at this and ask you to identify this document.

10 A (Witness reviewing document.)

11 Q And can you identify that document for the
12 record, please?

13 A Looking at the first page, it appears to me to
14 be the Senate Journal record of proceedings on Wednesday,
15 March 18th, 2009.

16 Q And that's part of the Senate Journal?

17 A Yes, sir.

18 Q And if I could just look at that briefly.

19 MR. GEAR: For the record, I will just
20 identify that this is Bates-stamped as USA 00013425. It
21 also was presented as a Defendant's exhibit in Texas v.
22 Holder as DE 006358.

23 Q (By Mr. Gear:) And I would direct your
24 attention to -- I would direct your attention to Page 589
25 in the Senate Journal, which is Bates-stamped as USA

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1 0013431 at the bottom.

2 And I'll ask you questions about that,
3 once you've had a chance to look at it.

4 A (Witness reviewing document.)

5 Q So my question is: Was there a point in time
6 during the hearing where Senator Van de Putte read into
7 the record a letter from Coby Shorter?

8 A I don't know if she read it or placed it.
9 Often, members will place something in the record, and
10 it's in the record. It doesn't mean that anybody else
11 saw it. But I don't know if this was placed in the
12 record or whether it -- the journal probably would not
13 reflect that, one way or the other.

14 Q And who is Coby Shorter, III?

15 A Coby Shorter was the Deputy Secretary of State.

16 Q And he was Deputy Secretary of State in 2009?

17 A I believe so. I think he testified at the
18 hearing.

19 Q I'm going to direct your attention to Page USA
20 00013433, also Bates-stamped as DE 006366, and that's
21 Page 591. And I'll ask you to take a look at the top.

22 A (Witness reviewing document.)

23 Q Does that help refresh your recollection in 2009
24 whether the issue of voter registration based on Spanish
25 surname was raised during -- in the Senate on the public

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1 record or legislative record?

2 A Well, all it does is tell me that this

3 letter -- let me read it --

4 Q Sure.

5 A -- so that I can understand what it is.

6 Q Please.

7 A (Witness reviewing document.)

8 Q So, when you're done, let me just for the record
9 ask you to identify what that is that has been placed or
10 read into the record. And if you can determine which,
11 that would be great, when you're done.

12 A (Witness reviewing document.) Okay. So what
13 do you want me to do?

14 Q So you were trying to determine what that was.
15 So, for the record, can you identify what exactly you're
16 reading for the record?

17 A Okay. This is a letter from Coby Shorter, who
18 was Deputy Secretary of State, dated March 11th, 2009.
19 That was apparently placed in the record on March 18th,
20 2009, following the vote on Senate Bill 362.

21 Q And that was placed in the record by Senator
22 Van de Putte?

23 A Yes, according to the record.

24 Q And, again, directly your attention to --

25 A The third --

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1 Q Yes. My question was: In 2009, were you made
2 aware that there was voter registration data available
3 based on Spanish surnames?

4 A I believe that this letter indicates at
5 least -- and I don't know when this -- if this was in the
6 record before the committee of the whole or not.

7 Q And in looking at the first page of this
8 document --

9 A I mean, it could have been --

10 Q Okay.

11 A -- because it's dated --

12 Q But, in any event, that's --

13 A March 11th, 2009.

14 Q That is the 2009 record, correct?

15 A Right. March 11th, 2009.

16 Q Sorry about that.

17 A So the meeting of the committee of the whole
18 began on March 17th, if I remember right, and concluded
19 on the 18th. And this was placed in the record on the
20 18th after the Senate reconvened as the Senate, as the
21 full Senate, out of the committee of the whole, and voted
22 on 362.

23 So this is -- I don't know how this was
24 presented. Often, members will place something in the
25 record, and for whatever purpose, for their legislative

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1 intent or whatever they want to do. Other members
2 usually don't see it unless they read the journal every
3 day, which I'll say probably most people don't have time
4 to do that. But the bottom line is: That's what this
5 is.

6 Q And so, specifically, there was a question posed
7 to Coby Shorter, who responds. Actually, the question
8 was: "Does the Secretary of State track the racial status
9 of registered voters?"

10 And are you aware of whether or not the
11 Secretary of State tracks the racial status of registered
12 voters?

13 A According to Mr. Shorter's letter, they do not.

14 Q Do you have any independent recollection of
15 whether or not the Secretary of State tracks the racial
16 status of registered voters?

17 A No.

18 Q And the question goes on to say, "If not, how
19 well the State prove that SB -- Senate Bill 362 does not
20 have an adverse impact on minority voters when the State
21 submits the bill for preclearance?"

22 And based on Page 591, USA 00013433, is
23 there an answer provided by Mr. Shorter?

24 A Well, I think he basically -- maybe this is
25 where the confusion is.

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1 The Legislative Counsel assists your
2 office, DOJ, I guess, in basically compiling data on
3 race and ethnicity for the purpose of redistricting, and
4 I think he's suggesting that, you know, a similar effort
5 could be -- what he says -- I'm not going to paraphrase.
6 I'll just read it.

7 Q Sure.

8 A "A similar effort to obtain such demographics
9 may be required for a voter identification bill.
10 Historically, we have worked with legislators to ensure
11 the best data available is included in the submissions."
12 That was his answer.

13 Q Was there any effort to compile such data by the
14 Senate?

15 A If there was, it would have been in the record.

16 Q Are you aware of any -- As you sit here today,
17 are you aware of any attempt to compile data -- and let me
18 see if I can get this right -- to compile data in an
19 effort to prove that Senate Bill SB 362 does not have an
20 adverse impact on minority voters when the State submits
21 the bill for preclearance? Are you aware of any efforts
22 to do that?

23 A It never was submitted for preclearance,
24 because it didn't pass. So I assume that because it
25 didn't pass, as it relates to Senate Bill 362, that

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1 wasn't done.

2 Q So --

3 A But I'm assuming. I mean, somebody may have,
4 postmortem that bill, done something along that line. I
5 do not know. If they did, I'm sure it's in the record
6 somewhere.

7 Q And just so I'm clear on your testimony, are you
8 aware of any --

9 A No.

10 Q -- steps taken to compile this data?

11 A No.

12 (Duncan Deposition Exhibit Number RD-14
13 marked.)

14 Q (By Mr. Gear:) I'm going to show you what has
15 been marked as RD-14. I would note for the record that
16 this has a Texas Bates-stamp of TX 00204754, and it was
17 produced as a highly confidential document.

18 And I would just ask you to identify what
19 this is for me, please.

20 A That appears to be correspondence between
21 Jennifer Fagan and Ann McGeehan in January of 2011.

22 Q And that would have been during the
23 consideration of SB 14?

24 A Right.

25 Q And in the e-mail from Ann McGeehan to Jennifer

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1 Fagan, subject titled, "Data," Jennifer Fagan -- who is
2 your staff, correct, --

3 A Correct.

4 Q -- asks Ms. McGeehan: "Does the SOS or any of
5 the local election officials collect ethnicity information
6 on voters?" Do you see that?

7 A Yes.

8 Q Did you direct Jennifer Fagan to seek this type
9 of information from the Secretary of State's office?

10 A I don't recall if I did or not, but if she did,
11 she was operating in her normal functions as director of
12 the committee. So I may have directed her, I may not, or
13 she may have done it on her own.

14 Q Do you recall if she communicated her findings
15 related to this e-mail?

16 A She usually does, but I don't recall
17 specifically getting that information.

18 Q And regarding the answer from Ann McGeehan, it
19 indicates that "The only ethnic data SOS or any county
20 voter registrar has is the number of voters that have
21 Hispanic surnames, because ethnicity is not requested on
22 the voter registration application." Do you see that?

23 A Yes, sir.

24 Q And she goes on to say: "We obtain a list of
25 Hispanic surnames from the U.S. Census and then run it

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1 against the state-wide list of voters. Do you see that?

2 A Yes, sir.

3 Q "It is not a perfect indicator, as some folks
4 may have Hispanic surnames that are not Hispanic and
5 vice-versa." It indicates that she can get the -- get
6 Jennifer Fagan -- "to get you the current number of
7 Hispanic surname voters in the morning, if you need it."
8 Do you see that?

9 A Yes, sir.

10 Q And do you know if Ann McGeehan provided
11 Jennifer Fagan the number of the current number of
12 Hispanic surname voters in the morning? And that would
13 have been on January 25th.

14 A I don't recall, one way or the other, whether
15 that occurred. If they did, we would probably put that
16 in the record for Senate Bill 14.

17 Q Do you know why this information was being
18 sought from the Secretary of State's office by your staff
19 member?

20 A I don't have specific recollection. I would
21 assume -- my only answer on that would be either assuming
22 that she was following up on issues that were raised by
23 debate or questions asked by other members of the Senate
24 with regard to the legislation that we were going to
25 consider in 2011.

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1 Q Considering the concerns that photo ID
2 legislation may result in the disenfranchisement of
3 minority voters, would this type of information have been
4 helpful to obtain from the Secretary of State's office?

5 MR. SWEETEN: Objection, calls for
6 speculation; objection, legislative privilege. You can
7 answer.

8 A You know, I don't know if it would have or not.
9 I don't know if we had it. I don't know what it says.
10 So I can't tell you if it would have been helpful or not,
11 without seeing the information.

12 Q And, again, so I'm clear, do you recall seeing
13 any data that was compiled by the Secretary of State's
14 office related to a list of Hispanic surnames from -- run
15 against the state-wide list of voters?

16 A As I sit here today, I don't remember anything.
17 I could have, but I don't remember it.

18 Q As you sit here today, do you know of any other
19 more reliable method to determine whether or not photo ID
20 legislation would have had a -- would have resulted in the
21 disenfranchisement of minority voters or had a negative
22 impact on minority voters?

23 MR. SWEETEN: Objection, foundation;
24 objection, legislative privilege. You can answer.

25 Q (By Mr. Gear:) Well, let me hash that out,

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1 because I want you to understand my question.

2 It's clear from the January 24th 2011
3 e-mail from Ann McGeehan to Jennifer Fagan -- and just to
4 be clear Ann McGeehan -- who is Ann McGeehan?

5 A She was the, I think, Deputy Secretary of State
6 in charge of elections.

7 Q So it's clear, from the e-mail from Ann McGeehan
8 to Jennifer Fagan, that there was data available.

9 MR. SWEETEN: Is that a question?

10 MR. GEAR: That's not a question.

11 MR. SWEETEN: Okay.

12 Q (By Mr. Gear:) While it may not have been a
13 perfect indicator, as indicated in the e-mail, were there
14 any other -- was there any other way to determine what the
15 impact of photo ID legislation would have been on Hispanic
16 voters?

17 MR. SWEETEN: Objection; foundation.

18 A First, I don't know of any -- the raw data
19 alone, suggested by Ms. McGeehan, in her response,
20 wouldn't have given the Legislature any meaningful
21 analytical evidence with regard to voter identification
22 legislation.

23 Secondly, I don't -- your question then
24 is -- I'm trying to -- it's kind of a long question.

25 Q (By Mr. Gear:) Sure. And I'm trying to work

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1 through it, as best I can.

2 MR. GEAR: And I understand the foundation
3 objection. I said "would have."

4 Q (By Mr. Gear:) So it's my understanding that
5 you are not aware of data that was compiled related to
6 Spanish surnames as run against the state-wide database;
7 is that correct?

8 A No. It's a confusing issue, because we do get
9 that information with regard to redistricting.

10 Q Okay.

11 A And so, unless Counsel prepares that, I don't
12 know, or I can't recall whether that was used.

13 All we're talking about here, with
14 Mr. McGeehan's e-mail, was just a list of Spanish
15 surname voters.

16 Q As run against the state-wide database.

17 A Well, okay. So it's raw data. And so raw data
18 alone does not give you any analytical ability to predict
19 what any legislation would do along those lines.

20 Q Well, you obtained --

21 A The raw data especially is raw -- it's just
22 Hispanic surname individuals.

23 Q And you indicated that you obtained similar
24 information for redistricting. Why do you obtain the
25 information for redistricting?

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1 MR. SWEETEN: Objection. I think that
2 misstates facts.

3 Q (By Mr. Gear:) And, again, I'm not trying to
4 misstate your testimony.

5 You've testified that similar information
6 was obtained --

7 A Right.

8 Q -- for redistricting, correct?

9 A Right.

10 MR. SWEETEN: So I'm -- as to what she's
11 saying or similar to --

12 MR. GEAR: Well, if you want to go into
13 the details of it, we can.

14 MR. SWEETEN: Okay.

15 Q (By Mr. Gear:) You've testified that
16 information related to Hispanic surnames, as run against
17 the state-wide list of voters, was obtained for
18 redistricting, correct?

19 A It's obtained in a different format for a
20 different purpose.

21 Q And what is the purpose?

22 A The purpose is for -- to draw for
23 reapportioning voter or legislative or congressional
24 districts.

25 And so the identification of Hispanic

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1 surname persons for ethnicity is certainly relevant to
2 requirements under the Voting Rights Act. And so for
3 that purpose is why we would be getting that
4 information.

5 With regard to the voter ID, just making
6 a point, the raw data would not be -- would not offer
7 any evidence of the impact of any voter ID legislation.
8 Without drawing wide assumptions, that would not be
9 statically valid.

10 Q And how would you know that?

11 A Well, it's just common sense. It doesn't take
12 a rocket scientist to figure that out. You know, the
13 data that she would provide would be gross data, meaning
14 bulk data, or it would provide no analytical information.

15 It just would be who has Hispanic
16 surnames, and that doesn't necessarily translate to any
17 useful information with regard to the impact of voter
18 identification legislation.

19 Q Would it have been -- Could it have possibly
20 been useful in determining the number of Spanish surname
21 registered voters that may not have one of the necessary
22 SB 14 identifications?

23 A No.

24 MR. SWEETEN: Objection, foundation;
25 calls for speculation. Go ahead and answer.

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1 A No. It's just raw data. It's just names.

2 Q (By Mr. Gear:) That's the -- Part of this that
3 is missing -- and I'm sorry if you've said this, but it's
4 Spanish surnames from the census, correct? And those
5 Spanish surnames would be run against the state-wide list
6 of voters.

7 So, with that understanding, why are you
8 now saying that it would only be raw -- it would only be
9 names and raw data?

10 MR. SWEETEN: Objection, foundation;
11 assumes facts not in evidence. You can answer.

12 A There is no other demographic information
13 provided. It's just that raw data.

14 Q (By Mr. Gear:) Just to complete this and close
15 the circle, is it your testimony that you don't believe
16 that type of data would have been helpful in assisting the
17 Senate to understand the impact of photo ID legislation on
18 Hispanic voters?

19 A I do not.

20 Q And it's your testimony, as I understand it,
21 that you -- that it's your understanding that that would
22 just simply have been raw data?

23 A My testimony is that raw data alone, as
24 proposed by Ms. McGeehan, could certainly be obtained,
25 and we probably may have obtained it. I don't know.

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1 But without -- that alone and without
2 much more data and information on demographics and other
3 statistical analysis, this data would not be -- alone
4 would not be helpful.

5 Q So, when you're talking about demographics and
6 other statistical analysis, what are you referring to?

7 A Well, I'm just saying here that's -- all you're
8 doing here is just assuming that somebody with an
9 Hispanic surname is going to be impacted by Senate
10 Bill 362.

11 And I think that is an -- that is an
12 assumption that is not supported by any valid
13 statistical evidence or studies or anything else. It
14 just -- It's just information.

15 And so, you know, I don't -- I'm not
16 following your point, but, again, that's pretty clear
17 and plain, in my view, from what she -- what is the
18 information she said she could provide. It's just names
19 of people.

20 Q And I believe I've asked you, and I'll just ask
21 you again.

22 A Okay.

23 Q Would that type of data have assisted in --
24 would that type of data --

25 MR. GEAR: Strike that.

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1 Q (By Mr. Gear:) Would that type of data have
2 been helpful in assisting legislators in the Senate in
3 understanding what Hispanic registered voters may not
4 possess the necessary forms of ID under SB 14?

5 MR. SWEETEN: Objection, foundation;
6 objection, asked and answered.

7 A I think I've answered it in about as many
8 ways -- in my belief, of the value of that data.

9 Q (By Mr. Gear:) Do you have any recollection as
10 to whether or not --

11 MR. GEAR: Strike that.

12 Q (By Mr. Gear:) Did Jennifer Fagan respond to
13 Ann McGeehan's offer to be provided the Spanish surname
14 voters' data?

15 A You know, I don't recall if she did or not. It
16 would be in the record if she did.

17 Q Well, and, again, I would like to understand
18 what you know, as you sit here today.

19 Do you recall seeing any response sent by
20 Jennifer Fagan to Ann McGeehan?

21 A No.

22 Q Do you recall seeing any response, as a
23 follow-up to Ann McGeehan's offer to provide current --
24 the current number of Hispanic surname voters to Jennifer
25 Fagan -- do you recall seeing a response to that?

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1 A No.

2 Q Do you ever seek to determine what the number of
3 registered voters with Spanish surnames was that may have
4 lacked the required SB 14 identification?

5 A I don't know. I don't know if there's any. I
6 don't recall any independently of what we did or what
7 other members of the Senate did or presented as evidence
8 at the hearing. It would be reflected in the record.

9 Q I want to, at last, turn to SB 14. SB 14 was
10 the photo ID legislation that passed in the Senate in
11 2011, correct?

12 A Yes, sir.

13 Q Prior to the consideration of SB 14, were you
14 involved in any communications with other legislators
15 during which a comparison between photo ID legislation and
16 immigration was made?

17 A I think, similar to other pieces of legislation
18 that we've talked about over the years, I don't have
19 specific recollection of any discussions about the issue
20 of illegal immigration with any specific member. You
21 know, that's my recollection.

22 Q Let me see if I can be a little more specific on
23 that question.

24 Do you recall engaging in communication
25 with Senator Patrick regarding photo ID legislation --

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1 MR. GEAR: Strike that.

2 Q (By Mr. Gear:) Do you recall engaging in
3 communication with Senator Patrick during which a
4 comparison between photo ID legislation and immigration
5 was made?

6 A Senator Patrick is a member who has expressed
7 concerns about that issue before. So I don't know what
8 we discussed about that or not -- discussed that issue or
9 not.

10 Q And what concerns did Senator Patrick raise?

11 A Well, he has always had a concern about those
12 issues, but I don't know specifically. He may have asked
13 somebody or me about that. I don't know.

14 Q And I'm trying to understand specifically what
15 the concerns regarding photo ID legislation and
16 immigration with Senator Patrick were?

17 A I'm not sure. I think I'm more relating it to
18 current -- to current things. But back then I don't
19 recall exactly what -- I don't recall having a discussion
20 with him about that. I'm not saying it didn't happen,
21 but I don't recall it.

22 Q Do you recall having a discussion with Senator
23 Fraser regarding photo ID legislation and immigration
24 being one and the same?

25 A Are you talking about on the record or off the

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1 record or what?

2 Q I'm just talking generally about discussions or
3 communications.

4 A I don't recall.

5 Q Then the answer was "no"?

6 A Right.

7 Q You don't recall. Do you recall having
8 communications with any legislator, either in the House or
9 the Senate, regarding photo ID legislation and immigration
10 being connected?

11 A No, I don't recall having that conversation.

12 (Duncan Deposition Exhibit Number RD-15
13 marked.)

14 Q (By Mr. Gear:) I'm showing you what has been
15 marked as RD-15, and I will give you a chance to look at
16 that.

17 MR. GEAR: And for the record, I would
18 indicate that this document has been marked as highly
19 confidential and was produced by Texas -- that's TX
20 00009987.

21 Q (By Mr. Gear:) And when you've had a chance to
22 look at that, we can talk about it.

23 A (Witness reviewing document.)

24 Q Have you had a chance to look at RD-15?

25 MR. SWEETEN: I would caution the witness

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1 to take the time you need to review it.

2 A Well, I've never seen this before. I'm not
3 sure what it is. But I guess I have seen it. It came to
4 me.

5 Q (By Mr. Gear:) I'm sorry. I didn't hear you.

6 A Never mind. I'm thinking about what this is.

7 Q Okay.

8 A And I haven't read the second part. I don't
9 know if it's relevant. I have read the first information
10 from Dan Patrick to several members of, it looks like,
11 the Republican caucus.

12 MR. GEAR: So let's just identify this
13 for the record. The first page is identified as TX
14 00009987.

15 Q (By Mr. Gear:) Do you see that there is an
16 indication "Forward, Follow up on meeting in Georgia, a
17 victory for citizenship verification." Do you see that?

18 A That's the subject line that Patrick was --
19 Senator Patrick assigned to this message, apparently.

20 Q And do you see that this is from Senator
21 Patrick, and it's got a "danpatrick700@gmail.com" e-mail?

22 A Yes.

23 Q And that this was sent to various senators and,
24 as you've described, Republican senators on March 29th,
25 2012 --

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1 A Yes.

2 Q -- at 12:55 a.m.?

3 A Yes, sir.

4 Q And looking down at the forward message, again,
5 it's from Dan Patrick. Who is "brianandmelbirdwell"?

6 A He's a -- Brian is a member of the Senate.

7 Q And Dan Patrick is a member of the Senate, also?

8 A Yes, sir.

9 Q And do you see that "Deuell"?

10 A Bob Deuell.

11 Q And do you know who that is?

12 A Yes. Senator Deuell.

13 Q And Estes?

14 A Craig Estes.

15 Q And Estes is a senator?

16 A Correct.

17 Q And he is a Republican senator?

18 A Correct.

19 Q And Florence Shapiro?

20 A Correct.

21 Q Florence Shapiro is a senator?

22 A At that time, yes.

23 Q There's a Glenn Hegar -- Hegar?

24 A Hegar.

25 Q And Glenn Hegar, I believe we've discussed

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1 before, is a senator?

2 A Correct.

3 Q A Republican senator?

4 A Yes.

5 Q Jane Nelson?

6 A Yes.

7 Q And who is Jane Nelson?

8 A A senator.

9 Q Jeff Wentworth?

10 A Senator.

11 Q Is it JoAnn Huff?

12 A Joan Huffman.

13 Q Joan Huffman. Senator?

14 A Yes.

15 Q John Cardona?

16 A Carona.

17 Q Carona. Senator?

18 A Yes.

19 Q Kyle Slager?

20 A Kel Seliger.

21 Q I was close.

22 A Not too close.

23 Q Senator?

24 A Senator.

25 Q Why don't you just pronounce the next one?

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1 A I'll let you take a stab at it.

2 Q Kevin --

3 A Kevin Eltife.

4 Q -- Eltife. Senator?

5 A Correct.

6 Q And there are a number of other people here.

7 Mike Jackson; do you know who that is?

8 A Yes. Senator.

9 Q There's an e-mail to Opie, "opie@cdmlaw.com."

10 Do you know who that is?

11 A That's me.

12 Q And you recognize that e-mail --

13 A Yes.

14 Q -- as being your e-mail?

15 A (Witness nods head.)

16 Q Robert Nichols; do you know who Robert Nichols
17 is?

18 A Yes.

19 Q Senator?

20 A Yes.

21 Q So does this refresh your recollection as to
22 whether you received this document? Have you seen this
23 document before?

24 A Well, again, it's addressed to me. I don't
25 recall seeing it.

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1 But, again, during legislative session,
2 three years ago, you see a lot of things. That wouldn't
3 have been something that I would have necessarily zoned
4 in on.

5 Q August 29th, 2010, would there have been any
6 photo ID legislation pending at the time?

7 MR. GEAR: Strike that.

8 Q (By Mr. Gear:) Do you know when SB 14 was
9 filed?

10 A January of -- apparently, we've got a record
11 here, if you want to go --

12 Q Let's just put this into context. We're going
13 to mark this.

14 A I don't have -- I don't have the record for 14,
15 I don't believe.

16 (Duncan Deposition Exhibit Number RD-16
17 marked.)

18 Q (By Mr. Gear:) I'm giving you what has been
19 marked as RD-16. And the question was when was -- first
20 of all, let's identify the document.

21 Is it fair to say RD-16 is the Texas
22 Legislature Online History for SB 14?

23 A That's what it appears to be.

24 Q And that's for the 82nd Legislature?

25 A Yes, sir.

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1 Q And it identifies authors of that bill, correct?

2 A Yes.

3 Q And it identifies you as being an author of that
4 bill, --

5 A Yes.

6 Q -- along with a number of other --

7 A Coauthors.

8 Q -- senators?

9 A Yes.

10 Q Senator Fraser, Senator Birdwell, Carona --
11 well, why don't I let you read the authors of the bill?

12 A Fraser, Birdwell, Carona --

13 COURT REPORTER: Could you slow down a
14 little?

15 THE WITNESS: Oh, I'm sorry.

16 A Fraser, F-R-A-S-E-R, Birdwell, Carona, Deuell,
17 D-E-U-E-L-L, Duncan, Eltife, E-L-T-I-F-E, Estes, Harris,
18 two "Rs," Hegar, H-E-G-A-R, Huffman, two "Fs," Jackson,
19 Nelson, Nichols, Ogden, O-G-D-E-N, Patrick, Seliger,
20 S-E-L-I-G-E-R, Shapiro, Wentworth, and Williams. Those
21 are the Senate sponsors or senate coauthors.

22 Q (By Mr. Gear:) And it appears that most, if not
23 all, of the authors of the bill appear on the e-mail
24 that's dated March 29th of 2012 -- I'm sorry -- March 29th
25 of 2010; is that correct?

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1 A Your foundation is incorrect.

2 Q Which ones -- Which senator is not listed on the
3 e-mail that is listed on the bill?

4 A RD-15 is the first e-mail dated August the
5 29th, 2010.

6 Q Correct.

7 A And so that's what you're referring to. I
8 think you said March, but I just was correcting that.

9 Q Thank you.

10 A And this appears to be the same -- these appear
11 to be -- the recipients of the e-mail dated August 29th,
12 2010, are the same persons who appear as authors of
13 Senate Bill 14.

14 Q Okay. Thank you for that. So, turning your
15 attention to the March -- I'm sorry -- the August 29th,
16 2010 e-mail, it indicates that -- from Dan Patrick, it
17 indicates, "Senators, I thought our two days was very
18 beneficial and look forward to the next meeting."

19 Do you recall what meeting is being
20 referenced in this e-mail?

21 A No, I don't. I think, you know, typically it
22 may have been a general caucus meeting, where we discuss
23 a lot of issues, not just single issues, but it looks
24 like, from reading this e-mail, I would only be
25 speculating as to what other issues were discussed.

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1 Q And when you say a "general caucus meeting," I'm
2 not sure I understand that.

3 A Well, just a Republican caucus like a Democrat
4 caucus. From time to time, you get together and discuss
5 issues and other matters.

6 Q So, apparently, there was a discussion at
7 breakfast about an independent conservative group?

8 A Yes.

9 Q Do you know which independent or what --

10 A No.

11 Q -- what the name of the independent conservative
12 groups are?

13 A No.

14 Q Are you a member of independent conservator
15 groups, along with the other members listed on this
16 e-mail?

17 A The Republican party. That's it. I'm not --
18 I'm not a member of any of the other organizations that
19 are associated with --

20 Q Were you a member of any other organizations
21 associated with all of these individuals?

22 A No, I don't think so. I'm not sure all of
23 these different individuals were a member of that either.
24 So I don't know. I don't know what he's talking about
25 when it's just a nondescript independent conservative

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1 group.

2 Q So, looking at the beginning of the third
3 paragraph, Page 1 of this e-mail, --

4 A Uh-huh.

5 Q -- it says, "In view of our discussion on voter
6 ID and immigration, several of you mentioned you thought
7 that the two issues were one and the same." Do you see
8 that?

9 A I do.

10 Q And does this help refresh your recollection as
11 to whether or not you engaged in communication regarding
12 voter ID legislation and immigration being one and the
13 same?

14 A No.

15 Q On Page 2, which is Bates-stamped TX 00009988 --
16 and I'm not sure if part of the Bates-stamp was cut off.
17 It also indicates that "Or at a minimum connected."

18 Does that help refresh your recollection
19 of whether or not you engaged in communications with
20 other senators related to photo ID legislation and it
21 being connected to immigration issues?

22 A No.

23 Q Do you have any recollection regarding photo ID
24 and immigration being an issue during the consideration of
25 SB 14?

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1 A Well, you know, you just have to go to the
2 records and see if it was on the record. You know, I
3 don't remember it being -- I don't remember whether or
4 not it was discussed in the debates on SB 14 in the
5 committee of the whole or otherwise.

6 This e-mail reflects that at some point
7 in time, Senator Patrick discussed it, but I don't know,
8 you know, whether it was a part of a larger meeting. My
9 sense is that this was a micro -- a topic that was
10 brought up in conjunction with a number of policy
11 issues, not related to voter ID, not related to any sort
12 of issue relating to election politics, but related to
13 other policy issues that we get involved in.

14 Q And just so I'm clear, and I want the record to
15 be clear that in the exhibit that you're now reviewing,
16 it says, "In view of our discussion" -- and you've
17 identified that this is an e-mail that is at least
18 addressed to you -- "on our voter ID and immigration,
19 several of you mentioned you thought that the two issues
20 were one and the same."

21 Do you have a belief that immigration and
22 photo ID are one and the same?

23 MR. SWEETEN: You're asking him if he
24 believes that? Is that what you're saying?

25 MR. GEAR: That's correct.

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1 MR. SWEETEN: Okay.

2 A You know, I take a -- you know, I don't really
3 know the answer to that.

4 I think the best way that I can respond
5 to it: I think that immigration really is an issue of
6 Federal concern, and I have long held that belief.

7 And so the only thing that I've ever --
8 the only thing that I believe is the State's appropriate
9 role in immigration is with regard to protecting the
10 border, as we have done on -- against drug cartels and
11 those sorts of criminal violations of the border.
12 It's not -- Immigration is a Federal issue, and I don't
13 see necessarily that either one of them -- that voter ID
14 is connected.

15 I told you earlier the policy reason that
16 compelled me to support voter ID is the notion of voter
17 harvesting, and I do believe that that -- or voter
18 registration card harvesting -- I do believe that that
19 occurs, and I do believe that there is abuse of the old
20 current system because of the lack of ability to verify
21 whether or not the voter presenting the card is the
22 authentic voter, and the room for abuse that that lends
23 itself to.

24 Immigration was never a part of my
25 consideration with regard to voter ID.

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1 Q And based on the e-mail, is it fair to say that
2 immigration was a part of at least some of the senators'
3 consideration as it relates to photo ID legislation?

4 A The only thing, I think, that you can draw
5 conclusively from this is that at least the senators --
6 one senator -- I don't know. I can't tell you whether
7 that verifies that other senators agreed with him or not.
8 It's only what he says.

9 Q Continuing to focus on this document, it says,
10 as to the discussion at breakfast about the independent
11 conservative group, "I thought the idea suggested by
12 Fraser, Duncan" -- I'm having trouble with that name -- is
13 it Eltife --

14 A Estes, Estes.

15 Q -- "and Huffman and others and accepted by me
16 will only make the group stronger."

17 What ideas were suggested during the
18 breakfast, if you know?

19 A I have no idea. I don't recall that
20 discussion.

21 Q Do you recall any communications from
22 constituents who supported SB 14 that expressed a belief
23 that voter ID legislation would prevent illegal immigrant
24 from voting at the polls? And I'm referencing
25 specifically SB 14.

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1 A Would you repeat that?

2 Q Do you recall any communications from
3 constituents who supported SB 14 that expressed a belief
4 or opinion that voter ID legislation would prevent illegal
5 immigrants from voting at the polls?

6 A Not particularly -- Well, not -- No, I don't.

7 Q Do you recall specifying any written
8 communications related to that issue?

9 A I don't recall. We may have. I don't see all
10 of the written communications that we have.

11 Q Do you recall responding to any communications
12 related to that issue?

13 A I do not. I'm not saying we didn't respond,
14 but I'm saying I do not remember it. We may have. I
15 don't know.

16 Q Do you recall having any communications from any
17 interest groups who supported SB 14 that expressed a
18 belief or opinion that voter ID legislation would prevent
19 illegal immigrants from voting at the polls?

20 A Sitting here today, I don't have any
21 recollection of that.

22 Q Prior to the filing of SB 14, were you or your
23 staff involved in any communications regarding the types
24 of ID that would be included in the provisions of SB 14?

25 MR. SWEETEN: Objection; legislative

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1 privilege.

2 A I don't believe that I was. I do not know
3 whether or not my staff was.

4 Q (By Mr. Gear:) Were you aware that Senator
5 Fraser's original bill was numbered as SB 178 and later
6 refiled to identify it as SB 14? Were you aware of that?

7 A I don't recall being aware of that.

8 Q Do you recall any communications related to the
9 refiling of SB 178?

10 A No, I do not.

11 Q Would you agree that SB 14 is a stricter bill
12 than HB 218 and SB 362?

13 MR. SWEETEN: Objection; legislative
14 privilege.

15 A What do you mean by "strict"?

16 Q (By Mr. Gear:) What I mean by "strict" is that
17 HB 218 and SB 362 would have allowed for government-issued
18 photo IDs, as well as student photo IDs issued by state
19 institutions. SB 14 does not, correct?

20 A I agree that SB 14 does not provide some of the
21 non-photo ID exceptions that 362 or 218 did.

22 Q Well, does SB 14 provide any non-photo ID
23 exceptions?

24 A I don't think it -- I think it -- I don't think
25 it does. I don't think it does.

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1 Q So would you agree that SB 14 is a stricter bill
2 than HB 218 and SB 362?

3 MR. SWEETEN: Objection; privilege.

4 A I do not know if strict applies. It's
5 different, and it's more confined to require -- committed
6 to the notion that photo ID should be required, as
7 opposed to other alternative forms.

8 (Duncan Deposition Exhibit Number RD-17
9 marked.)

10 Q (By Mr. Gear:) I'm showing you what has been
11 marked as SB 14. Do you recognize this as the bill, SB
12 14?

13 A (Witness reviewing document.) Sure, yes.

14 MR. GEAR: And for the record, this was
15 previously marked as Duncan Exhibit 530.

16 Q (By Mr. Gear:) And turning your attention to
17 the last page of SB 14, do you see that it has been signed
18 by the Governor?

19 A I do.

20 Q And what would that indicate, as far as the
21 status of the bill?

22 A Passed.

23 Q So this would be the final bill related to
24 SB 14?

25 A Yes, sir.

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1 Q Turning your attention to Page 9, Section
2 63.0101, "Documentation of proof of identification," I
3 just want to walk through these quickly with you.

4 Do you agree, based on the final -- based
5 on this exhibit, that SB 14 allowed for a driver's
6 license, election identification certificate, or personal
7 identification card issued to the person by the
8 Department of Public Safety that has not expired or that
9 expired no earlier than 60 days before the date of
10 presentation?

11 A Yes, sir.

12 Q Do you agree that SB 14 allows for a United
13 States military identification card that contains the
14 person's photograph that has not expired or that expired
15 no earlier than 60 days before the date of presentation?

16 A Yes, I agree that that's a part of the bill.

17 Q Do you agree that SB 14 allows for United States
18 citizenship certificates issued to the person that
19 contains the person's photograph?

20 A Yes.

21 Q It also allows for the United States -- for a
22 United States passport issued to the person that has not
23 expired or that expired no earlier than 60 days before the
24 date of the presentation, correct?

25 A That's correct.

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1 Q And it allows for a license to carry a concealed
2 handgun issued to the person by the Department of Public
3 Safety that has not expired or that expired no earlier
4 than 60 days before the date of presentation, correct?

5 A Correct.

6 Q Does it allow for any other type of photo
7 identification based on your review of this bill?

8 A Well, let me read a little more here.
9 (Witness reviewing document.)

10 There are other exceptions that are
11 included in Section 17 of the bill, but --

12 Q And what are those? Are you referencing the
13 exemptions?

14 A Right. Exemptions with regard to provisional
15 ballots.

16 Q So my question was: Under SB 14, are there any
17 other acceptable forms of photo ID that are allowed?

18 A Well, that and the ones that are in 17, the
19 provisions for the provisional ballot.

20 Q And that's the process by which a voter
21 provisionally can cure within a 60-day period?

22 A Right.

23 Q And does that process, the six-day cure period,
24 allow a voter to present anything other than the types of
25 ID that we've just described in SB 14?

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1 A I think there's one narrow exception with
2 regard to the --

3 Q Religious exemptions?

4 A Maybe the religious exemptions. I'm not -- I
5 don't know if that's -- I'm thinking more about the --
6 let me read the exemptions.

7 Q Sure.

8 A (Witness reviewing document.) Religious
9 objections being photograph exemptions. There is the
10 exemption for the person who lost their identification as
11 a result of a natural disaster. Those are two of the
12 exemptions.

13 Q There's also a disability exemption, correct?

14 A I think you're right. There is one. I
15 remember us discussing that.

16 Q But those aren't specifically photo ID -- those
17 are exemptions, correct?

18 A Well, they're exceptions to the required photo
19 ID.

20 Q Fair enough. Can you identify any facts that
21 support why forms of non-photo IDs are exceptional options
22 in 2009, but not acceptable options in 2011 under SB 14?

23 MR. SWEETEN: Objection; legislative
24 privilege.

25 A Not as we sit here today.

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1 Q (By Mr. Gear:) Can you identify any facts to
2 support why all State and Federal Government photo IDs
3 were acceptable in 2009, under SB 362, but not in 2011,
4 during the consideration of SB 14?

5 MR. SWEETEN: Objection; legislative
6 privilege.

7 A Not as we sit here today. The record may
8 reflect some discussion of that.

9 Q (By Mr. Gear:) Can you identify any facts to
10 support why all State and Federal Government photo IDs
11 were acceptable in 2009, under SB 362, but not in 2011,
12 during the consideration of SB 14?

13 MR. SWEETEN: Objection to foundation; and
14 objection, legislative privilege.

15 Q (By Mr. Gear:) Well then, if you're not -- if
16 you don't understand my question, we can go back to --

17 A No. I understand it. I just understand the
18 foundation objection, too, and agree with it.

19 But the question that you've asked me is
20 today, as we sit here today. I don't have any
21 independent recollection of any specific facts that were
22 forwarded by the author or the primary author of the
23 bill for that -- for removing those different options.

24 The record does reflect discussion of
25 that, and I would refer you to the record. I think it

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1 does. If I remember correctly, there was some debate
2 about that. I don't remember specifically what the
3 debate was, but I do recall that there was discussion
4 about that at the committee of the whole level and
5 perhaps at the -- I can't remember if there was a
6 significant debate when the bill was laid out on the
7 floor as a vote for endorsement.

8 Q And I want to be clear. My question was: Can
9 you identify any facts to support why all State and
10 Federal Government photo IDs were acceptable in 2009,
11 under SB 362, but not in 2011, during the consideration of
12 SB 14?

13 And I believe you've stated that you
14 understood my question to ask: As you sit here today?

15 A Right.

16 Q But it was: Can you identify any facts?

17 MR. SWEETEN: Objection; legislative
18 privilege.

19 A The facts that I would identify would be those
20 facts stated in the record.

21 Q (By Mr. Gear:) But, as you sit here today,
22 you're not aware of what the facts stated in the record
23 are related to this issue?

24 A As I'm sitting here --

25 MR. SWEETEN: Same objection.

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1 A As I'm sitting here today, I'm not prepared to
2 articulate the facts, because I don't recall exactly
3 what -- I don't recall the specific reasons for removing
4 those issues.

5 I do recall them being discussed and
6 debated on the Senate floor at the committee of the
7 whole or on the second reading of the bill.

8 Q (By Mr. Gear:) Were you involved -- Were you or
9 your staff involved in communications related to excluding
10 State and Federal IDs from SB 14?

11 A I don't believe I was. I don't know if my
12 staff was or not. "My staff" meaning the committee staff
13 or my internal staff, either one.

14 Q Between 2009 and 2011, are you aware of any
15 facts that support that a Texas voter was prosecuted for
16 voter impersonation while using a State or Federal
17 Government photo ID?

18 A I think we've discussed that at length before.
19 I think there's some information in the record. I don't
20 know if this was for 362. I think there was information
21 in the record from 2006. I don't know if there was for
22 218 or 362 or 14.

23 I know there's some record. There's some
24 information in the record that people were prosecuted
25 for voter fraud, and I don't think that the -- at least

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1 I did not delineate what type of voter fraud. I don't
2 know that the records that we have before us indicate
3 exactly the nature of the fraud or infraction that was
4 alleged.

5 Q Just so I'm clear, as you sit here today, you
6 can't delineate what type of fraud may have been testified
7 to --

8 A That's right.

9 Q -- related to photo ID legislation anyway?

10 A Correct.

11 Q Related to SB 14, are you aware of any reports
12 that were prepared for the Senate to assist the
13 Legislature in understanding the impact of SB 14 on
14 minority voters?

15 MR. SWEETEN: Objection; legislative
16 privilege.

17 A I think, again, I would answer with regard to
18 the record, and I do recall we did bring forward the
19 record on Senate Bill 362 and made it a part of the
20 record for Senate Bill 14.

21 So all of that information that was
22 developed in 2009 and then the additional information
23 and testimony that was developed and the evidence that
24 was developed in 2011 were available to the members in
25 their deliberations on Senate Bill 14.

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1 Q (By Mr. Gear:) And are you aware of any facts
2 in either the record of SB 362 or SB 14 that would --

3 A No.

4 Q -- support that those photo ID legislations
5 could not have an impact on minority voters?

6 A As I --

7 MR. SWEETEN: Same objection.

8 A As we sit here today, I can't point to you any
9 specific facts. I do believe the record supports the --
10 or provides information in regard to the facts that
11 you're requesting.

12 Q (By Mr. Gear:) Do you have any facts to support
13 why student IDs were excluded from SB 14?

14 A I think we've discussed that. No.

15 MR. SWEETEN: I object to legislative
16 privilege on that question.

17 Q (By Mr. Gear:) Are you aware of any incident or
18 fact that occurred between 2009 and 2011 that would
19 have -- that would support the need to remove student IDs
20 from SB 14?

21 A No, I'm not. I'm getting closer to the --

22 MR. GEAR: Now is a good time to take a
23 break.

24 (Short break taken.)

25 MR. GEAR: Let's go back on the record.

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1 Q (By Mr. Gear:) I believe we've talked about
2 this, so I'm just going to touch on it briefly.

3 SB 14 was referred to the committee of the
4 whole, correct?

5 A Yes, sir.

6 Q And was that done by special order or
7 resolution?

8 A I believe it was done by motion to resolve by
9 the committee as a whole. I don't know if that was a
10 motion in writing or just an oral motion.

11 Q Do you recall Resolution 36, by any chance?

12 A That may have been the writing or the -- I
13 think you probably have to do that by resolution, now
14 that I think about it.

15 Q Do you recall Senator Van de Putte objecting to
16 that resolution?

17 A I don't -- I'm sure she did. I don't know. I
18 don't recall. I don't recall the debate, but I know
19 she's -- she was vocal on that issue.

20 Q And as we have gone through the testimony,
21 Senator Van de Putte, it appears, was consistent in her
22 objection to photo ID legislation, correct?

23 A Exactly.

24 Q And, in fact, it appears that in our discussion
25 of HB 218, SB 362, and now SB 14 that she raised the

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1 concern that photo ID legislation may have a
2 disenfranchising impact on minority voters, correct?

3 A You know, I would let the record characterize
4 her debate or her objection.

5 Q Fair enough.

6 A I would refer to that.

7 Q And so, thinking about photo ID legislation, in
8 total, again, we didn't speak much about it, but SB 1706,
9 HB 218, HB -- SB 362, and SB 14 -- are you aware of any
10 reports that were prepared to assist the Senate in
11 identifying whether or not photo ID legislation would have
12 an impact on minority voters?

13 A Well, I think the interim community report that
14 we did, in 2006, was a pretty fair analysis of the issue,
15 with resources for members to be able to begin their
16 research. It wasn't certainly exhaustive, but I think
17 there was -- an effort was made to provide resources for
18 people to review, and, again, the hearing process that we
19 designed for the committee as a whole.

20 And, for example, in 218, we were at the
21 end of a legislative session when we heard that House
22 bill, and so there was really little or no time to
23 develop anything, other than what the House had
24 developed, probably, the way the legislative process
25 works.

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1 The committee of the whole process did
2 allow us, in 2009, to allow for expert testimony and lay
3 testimony before the entire Senate assembled, as the
4 committee of the whole, to provide a normal legislative
5 analysis, where members hear evidence, they deliberate
6 on the evidence, they individually weigh the evidence,
7 and make their decision, and that --

8 Q So that --

9 A That's how the legislative process works. And
10 so I believe that the committee of the whole process
11 actually was a complement to allowing more -- or allowing
12 for a more in-depth deliberation on the issue and allowed
13 all members to input evidence into the record, or to the
14 body, to make compelling arguments for their side,
15 whichever -- whether they were an opponent or a proponent
16 of the legislation.

17 Q So, specifically, other than the 2006 interim
18 report, were there any reports prepared by the committee
19 of the whole or the State Affairs Committee or -- I'm
20 sorry. That's compound. I will withdraw the question.

21 A Okay.

22 Q Other than the 2006 interim report, are you
23 aware of any other reports that were prepared to assist
24 the Senate in identifying whether or not SB 14 would have
25 a --

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1 MR. GEAR: Strike that. It's getting
2 late.

3 Q (By Mr. Gear:) Other than the 2006 interim
4 report, are you aware of any other reports that were
5 prepared to assist senators in understanding the impact of
6 photo ID legislative on minority voters?

7 A I don't know if we did an interim report in two
8 thousand -- between the -- prior to the 2009 legislation
9 or not.

10 Q You're not aware of it, as you sit here today?

11 A I don't remember. That's all I can say on
12 that. But I'm not -- other than the 2006, you know, I
13 don't have a specific memory of any other reports that
14 were generated by the Senate, other than the data
15 analysis and evidence that we received from witnesses
16 testifying for and against the bills in the various
17 committees of the whole hearings or the committee of the
18 whole hearings.

19 (Duncan Deposition Exhibit Number RD-18
20 marked.)

21 Q (By Mr. Gear:) I'm going to show you what has
22 been marked as RD-18. I will give you a chance to take a
23 look at that.

24 A (Witness reviewing document.)

25 MR. SWEETEN: Can I see a copy of that?

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1 MR. GEAR: Yes.

2 MR. SWEETEN: Thank you, sir.

3 MR. GEAR: For the record, RD-18 is
4 identified as highly confidential. It was produced by
5 Texas as TX 00021328.

6 Q (By Mr. Gear:) Can you identify what this --
7 the first page of this document is, please?

8 A It's an e-mail from Bryan Hebert dated
9 January 27th.

10 Q To Jennifer Fagan?

11 A To Jonathan Stinson, Ryan LaRue, Amanda
12 Montagne, Wroe Jackson, Janice McCoy, and Jennifer Fagan.

13 Q And just so I know, who is Jonathan Stinson, if
14 you know?

15 A I don't know.

16 Q Do you know who Ryan LaRue is?

17 A No.

18 Q Do you know who Amanda Montagne is?

19 A No.

20 Q Is that Wroe Jackson?

21 A That's what it looks like.

22 Q Do you know who Wroe Jackson is?

23 A No.

24 Q Janice McCoy?

25 A I think Janice may be -- and I'm not -- maybe a

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1 staff person for Senator Fraser.

2 Q And you obviously know who Jennifer Fagan is.

3 A Yes.

4 Q She's your staff person. And this is entitled:
5 "SB 14 floor amendments."

6 A Yes.

7 Q Do you see that? The body of the e-mail
8 identifies -- or it indicates that "Attached is a summary
9 of all the SB 14 amendments (I used a list from the
10 Houston Chronicle, corrected it and cleaned it up), 41
11 amendments were proposed and nine were adopted -- eight of
12 which were sponsored or cosponsored by Democrats. So I'd
13 say they had significant input into the bill." Do you see
14 that?

15 A Yes, sir.

16 Q It also indicates that "I'm working on a summary
17 of the substantive provisions of the bill (i.e., 'What the
18 hell did we just pass?')" Do you see that?

19 A Yes.

20 Q Have you seen this document before?

21 A No, sir.

22 Q Did you see the document that follows up on this
23 particular e-mail?

24 MR. GEAR: I'm sorry. I'll strike that.

25 Q (By Mr. Gear:) If you haven't seen it, then you

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1 wouldn't know what follows up.

2 But let's turn to Page 2, which was
3 also -- which is also identified as highly confidential,
4 TX 00021329. And I would just ask you to identify this
5 document for me.

6 A It appears to be a list that somebody has
7 prepared related to amendments that were offered on
8 Senate Bill 14.

9 Q And you were present during the offering of
10 amendments on Senate Bill 14?

11 A Yes. I don't know -- these are floor
12 amendments, so I assume that this is not -- these are not
13 amendments that were offered at that time at the
14 committee level.

15 Q So let's talk about the floor amendments for a
16 minute -- for a minute. I'm sorry.

17 Number 12, Wendy Davis -- I assume "W.
18 Davis" is Wendy Davis --

19 A Yes.

20 Q -- "would provide for a free state ID to those
21 who ask." Do you see how that particular amendment was
22 handled?

23 A Number 12?

24 Q Yes.

25 A It was tabled.

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1 Q And it was tabled by a vote of 19 to 12?

2 A Yes, sir.

3 Q Do you believe that if SB 14 included a
4 provision that would have provided free -- for free state
5 IDs to those who asked, it would have assisted in
6 minimizing the impact to minority voters?

7 A I may be wrong on this, but I believe we did
8 appropriate, and we did provide those IDs.

9 Q And I believe SB 14 provides for EICs, correct,
10 election identification certificates?

11 A Right. I guess that's -- I'm not --
12 technically, I can't remember exactly, but I do remember
13 conceptually that we -- that, you know, we appropriated
14 money to do that, and I know the bill provided -- the
15 bill authorized the expenditure, and we appropriated
16 that.

17 Q And I guess I was interpreting her amendment --

18 A That's my recollection.

19 Q I was interpreting her amendment to at least
20 request a consideration that free Texas state IDs were
21 provided to those who asked, and SB 14 did not do that,
22 correct?

23 A I haven't correlated that. So I can't answer
24 that accurately, other than I believe we did provide
25 authority and appropriations to provide identification --

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1 free identification sufficient to satisfy the
2 requirements of Senate Bill 14.

3 Q Number 13 --

4 A But correct me if I'm wrong. I'm pretty sure
5 we did, though.

6 Q And, again, I'll take your interpretation of
7 this amendment --

8 A Sure.

9 Q -- as referencing election identification
10 certificates, correct?

11 A Seeing it for the first time today, I'll go --
12 I'm fine with understanding that.

13 Q Number 13, "Wendy Davis, would allow for the use
14 of expired IDs."

15 And do you see how that particular
16 amendment was handled --

17 A It was tabled.

18 Q -- in the Senate?

19 A It was tabled.

20 Q And it was tabled by a vote of 19 to 11?

21 A Yes.

22 Q And if SB 14 would have allowed for the use of
23 expired IDs without limitation, do you believe that that
24 may have had a positive impact on avoiding
25 disenfranchisement of minority voters?

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1 A I don't see how it would. I would disagree
2 with that statement.

3 Q Do you believe it would be easier for --

4 MR. GEAR: Strike that.

5 Q (By Mr. Gear:) Are you aware of the number of
6 registered voters in the State of Texas, during the
7 consideration of SB 14, that lacked either a state ID or a
8 Texas driver's license? And that's a Texas state ID.

9 A I do not know the -- I don't recall that there
10 was accurate testimony on that.

11 Q And I'm sorry. You don't --

12 A I do not recall that there was any evidence on
13 that, but there may have been. I don't recall it. If
14 there was, it was certainly an estimate.

15 Q And if you don't recall the testimony, you don't
16 recall if it was an estimate or an accurate projection?

17 A Well, the record would reflect that.

18 Q Turning your attention to Number 20, which was
19 offered by Senator West, he offered to use a Medicare card
20 as a form of identification.

21 If that particular amendment would have
22 been included in SB 14, would you have supported it?

23 A I probably would have supported the amendment.
24 I mean, you know, it's not -- I think, to get a Medicare
25 card, you probably have to -- I imagine you may have to

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1 submit an ID. I don't know.

2 But I would -- we're arguing policy here.

3 Again, it's hypothetical, or at least it didn't pass.

4 But bottom line is: I think, on a Medicare card, it
5 would be like any other benefit. You would have to show
6 some sort of ID to be able to qualify or meet the
7 various Federal qualifications for Medicare.

8 Q And you would have supported it if it was
9 included in SB 14?

10 A Sure, yes.

11 Q And do you see how that particular amendment was
12 handled in the Senate?

13 A It was tabled.

14 Q And it was tabled by a vote of --

15 A Nineteen to 11.

16 Q Number 21, an amendment offered by Wendy Davis,
17 would have allowed any photo ID issued by the Federal
18 Government, subentity of Texas, or higher education
19 amendments -- I'm sorry. I didn't read that right. I did
20 read it right.

21 MR. GEAR: Strike that.

22 Q (By Mr. Gear:) 21 would have allowed any photo
23 ID issued by the Federal Government, sub-Texas --
24 subentity of Texas, or higher education.

25 And I believe your prior testimony is that

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1 if it was included in SB 14, you would have supported
2 such provisions, correct?

3 A I would have voted -- I would not have -- I
4 would have supported the bill with that in there.

5 Q Turning your attention to Number 30, an
6 amendment offered by Senator Ellis would have required the
7 Secretary of State to examine whether or not the bill has
8 an adverse effect on district population groups. Do you
9 see that?

10 A Yes.

11 Q And based on your prior testimony and our
12 discussion regarding concerns that SB 14 and other photo
13 ID legislation would have a disenfranchising impact on
14 minority voters, do you believe that if included in SB 14,
15 this might have minimized some of those concerns or
16 mitigated some of those concerns?

17 A I don't know the answer to that. It would be
18 pure speculation on my part.

19 Q Well, if the Secretary of State were allowed to
20 examine whether or not the bill had an adverse impact on
21 district population groups, do you believe -- do you have
22 any opinion as to whether or not that would have resolved
23 some of the concerns expressed during consideration of the
24 photo ID legislation?

25 MR. SWEETEN: Objection to speculation,

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1 asked and answered; objection, legislative privilege. Go
2 ahead.

3 A The Secretary of State does not have resources,
4 the expertise, or the jurisdiction to make, in my view,
5 that type of judicial determination. So I just don't see
6 that that would have improved the bill or at least made
7 the bill -- I don't see where that would have a positive
8 impact with regard to affecting or improving the bill.

9 The Secretary of State's office typically
10 does not make those types of determinations on behalf of
11 the State of Texas.

12 Q And do you see how this particular amendment was
13 handled?

14 A It was tabled.

15 Q And it was tabled by a vote of --

16 A Nineteen to 11.

17 Q Number 39 was an amendment offered by you,
18 Senator Davis, Senator Ogden, and Senator Patrick,
19 correct?

20 A Correct.

21 Q And that amendment would have allowed for the
22 exemption from photo ID for indigent and religious
23 objections -- objectors. And do you see that that was
24 passed by a vote of 30 to zero?

25 A Yes.

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1 Q And in reviewing SB 14, the signed version of
2 the bill, is it fair to say that the exemption from photo
3 ID for indigent voters is no longer included in the
4 provisions of SB 14?

5 A That's a fair statement.

6 Q It was passed by a vote of 30 to zero. Can you
7 tell me where that particular provision was removed from
8 your consideration of SB 14?

9 A Generally, it appears that it was removed
10 during the deliberations in the House.

11 Q If SB 14 would have included an exemption from
12 photo IDs for indigent voters, would you have supported
13 it?

14 A Yes.

15 Q And, in fact, you did support it?

16 A Yes.

17 Q And, in fact, the Senate supported it
18 unanimously by a vote of 30 to zero, correct?

19 A That's correct.

20 Q And why do you think that --

21 MR. GEAR: Strike that.

22 Q (By Mr. Gear:) Can you identify the facts for
23 me of why you believed that the exemption from photo ID
24 for indigent voters was important to be included in the
25 provisions of SB 14?

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1 MR. SWEETEN: Objection; legislative
2 privilege. You can answer.

3 A Well, there were several issues that were
4 raised with regard to the indigencies, and in addition to
5 the fact that that provision was also included in the
6 Indiana law, and I thought that it would be an
7 appropriate measure to be included in this bill.

8 Senator Davis originally had an
9 amendment. I don't think the amendment was -- I can't
10 remember why I thought there was a flaw in it, but she
11 and I worked on it, I made a change in it, and we agreed
12 to go with it, as other members did, too.

13 But, primarily, because it tracked the
14 Indiana law, we felt like that was -- or at least I felt
15 like -- I can't speak for everybody but myself, but I
16 felt like that was a provision in the Indiana law that
17 was appropriate, and I didn't have any objections to
18 that.

19 Q And, in fact, it appears, based on a vote of 30
20 to zero, that none of the senators in the House had an
21 objection to that. In fact, they supported that?

22 A None of the senators in the Senate.

23 Q The Senate. Thank you. And the exemption that
24 you drafted, was that similar to the exemption from photo
25 IDs for indigent voters in the Indiana law?

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1 A Yes, sir.

2 Q And did you have any communications with the
3 House, during their considerations of SB 14, regarding
4 leaving that particular exemption in SB 14?

5 A No, I did not. I did -- I was on the finance
6 committee, and we started working on the budget.

7 Q Would you have preferred that that particular
8 exemption had been left in SB 14?

9 A Well I offered it, and so -- I offered it.

10 Q I'm sorry? You --

11 A I offered it as an amendment.

12 Q Okay. And so the answer is "yes"?

13 A Well, I would -- I was fine with that being in
14 there.

15 Q Okay. Are you aware of any discussion from the
16 Secretary of State's office regarding the exemption from
17 photo IDs for indigent voters? Was there any concern
18 expressed by the Secretary of State's office?

19 A Not that I'm aware of.

20 Q Was there any concern that you're aware of that
21 was expressed by the Texas Attorney General's Office
22 related to that particular exemption?

23 A No.

24 Q Do you know what the concern was that was
25 expressed in the House related to that particular

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1 exemption?

2 A No. I haven't gone back and looked at that.

3 Q Did you know, in 2011, what that concern was?

4 A No.

5 MR. GEAR: If you could give me a
6 five-minute break, --

7 MR. SWEETEN: Sure.

8 MR. GEAR: -- I may be passing the
9 witness.

10 MR. SWEETEN: Okay. Great.

11 (Short break taken.)

12 MR. GEAR: I'll pass the witness.

13 MR. DUNCAN: I'll never pass up a chance
14 to take a break.

15 (Short break taken.)

16 EXAMINATION

17 BY MR. ROSS:

18 Q Good afternoon, Mr. Duncan -- or Senator Duncan.
19 Excuse me.

20 I'm Deuel Ross. I'm the attorney
21 representing the Plaintiff-Intervenors, Texas League of
22 Young Voters, and the individual Plaintiff, Imani Clark,
23 Plaintiff -- Plaintiff-Intervenor. Excuse me.

24 I'm going to ask you a couple of follow-up
25 questions based on what Mr. Gear has already asked you

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1 this morning, as well as maybe go back over a couple of
2 things just, you know, to make sure we've exhausted
3 everything.

4 Just starting with SB 14, are you aware
5 that it was designated an emergency legislation?

6 A Yes.

7 Q Okay. Do you know who designated it so?

8 A Only the Governor can designate that.

9 Q Okay. Do you have a sense of why he did that?

10 A You would have to read his proclamation.

11 Q Okay. What's your -- you don't have an
12 understanding of his reason?

13 A It's speculation. I'm not going to speculate
14 on what the Governor was thinking at the time he does
15 something.

16 Q Do you know the process for designating
17 something as an emergency legislation?

18 A I think he basically must have -- he enters
19 into a -- he just signs a proclamation, declaring
20 something an emergency and presents it --

21 Q Okay.

22 A -- to the presiding officers of both Houses.

23 Q I want to introduce -- did you have any
24 communication with the Governor about designating it an
25 emergency legislation?

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1 A No.

2 Q No phone calls, e-mails?

3 A Not that I recall.

4 Q Just as an exhibit, I was making sure it gets in
5 there. I'm sorry. I'm going to mark this as --

6 A The last one was RD-18.

7 Q The last one was 18.

8 A That's what I have. I've tried to keep them in
9 order here.

10 (Duncan Deposition Exhibit Number RD-19
11 marked.)

12 Q (By Mr. Ross:) Okay. Can you take a look at
13 that document for me?

14 A (Witness reviewing document.)

15 Q Are you familiar with this document?

16 A No.

17 Q Can you tell me who it was sent from?

18 A This is from Julia Rathgeber on January 20th,
19 2011.

20 MR. SWEETEN: Do you have another copy of
21 that?

22 MR. ROSS: I gave it to you. It's right
23 there.

24 MR. SWEETEN: Oh, I have it.

25 Q (By Mr. Ross:) Sorry. It was from who?

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1 A Julia Rathgeber.

2 Q Okay. And that was January 20th, 2011?

3 A Yes.

4 Q To Jennifer Fagan?

5 A Yes.

6 Q Okay. Can you take a look at the bottom of that
7 e-mail?

8 A Yes.

9 Q Do you see who that e-mail was from?

10 A Blaine Brunson.

11 Q Do you know who Blaine Brunson is?

12 A He was on the executive staff for the
13 Lieutenant Governor.

14 Q Do you see who it was to?

15 A It was to Julie Rathgeber, Karina Davis, Josh
16 Robinson -- I don't know who that is -- Mike Walz,
17 Jennifer Fagan, Porter Wilson, and Janice McCoy,
18 "Subject: Announcement."

19 Q Do you know who Julia Rathgeber is?

20 A She was a legislative director for
21 Lieutenant Governor Dewhurst. She is now the Insurance
22 Commissioner.

23 Q Karina Davis?

24 A She was the parliamentarian for the Senate.

25 Q You said you don't know who Josh Robinson was?

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1 A No.

2 Q Mike Walz?

3 A I don't know he is.

4 Q And Jennifer Fagan worked in your office?

5 A Yes.

6 Q Porter Wilson?

7 A He was in my office.

8 Q And Janice McCoy?

9 A She was -- I believe she was Senator Fraser's
10 staff member.

11 Q Do you see the second line -- or excuse me --
12 the second paragraph at the bottom of that e-mail?

13 A Yes.

14 Q Can you read that for me?

15 A "Met with Senator Duncan. He will chair COW,"
16 which is the committee of the whole, "and asked Jennifer
17 to meet with Karina on a draft plan, and then for them to
18 come meet with him in a few hours."

19 Q Do you know what -- can you tell me what "COW"
20 stands for?

21 A Committee of the whole is what I'm assuming.

22 Q Okay. Do you know what draft plan they're
23 referring to?

24 A No. Other than, you know, I'm speculating, but
25 more likely than not, coming from Karina, it would be the

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1 same type of plan that we had in 2009 for the committee
2 of the whole. We're talking logistics here. We're not
3 talking about a bill.

4 Q So, to your understanding, you're not talking
5 about the bill in this particular incident?

6 A I would not have been talking about it with
7 Karina. I would have been talking about -- Jennifer and
8 Karina were basically helping us to navigate the process
9 and make sure that we thought through all of the
10 logistics of the hearing of the committee of the whole.

11 Q Okay. This says Mr. Brunson met with you; is
12 that right?

13 A Probably.

14 Q Well, it says, "Met with Senator Duncan. He
15 will chair the committee of the whole."

16 A Right. That's what I just -- I guess I was
17 advised by the Lieutenant Governor's office that there
18 would be a committee of the whole, and I would chair it.

19 Q And it's your position that you didn't volunteer
20 for that; is that right?

21 A Well, you know, being -- I don't know if I
22 volunteered for it or not. I mean, it was -- it's just
23 part of the things I do in the Senate. So, if they
24 wanted me to do it, I would be happy to.

25 Q So the Lieutenant Governor asked you?

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1 A Yes. Well, his staff did, but I assume that he
2 asked them to ask me.

3 Q Okay. Do you recall that conversation --

4 A No.

5 Q -- in which they asked you?

6 A No.

7 Q Do you recall if there were any e-mails
8 exchanged other than that?

9 A Other than this, I haven't seen any.

10 Q Okay. We can move up to the next line.

11 A Move up?

12 Q Yes. It's the e-mail from Karina Davis.

13 A Oh, yes.

14 Q January 20th, 2011, at 12:27.

15 A Yes, sir.

16 Q Was that also sent to the same --

17 A Same string of everyone, it says.

18 Q Including Jennifer Fagan in your office?

19 A Yes.

20 Q Do you see where it says, "We have a potential
21 game plan"?

22 A Yes.

23 Q "And Jennifer is going to run it by Duncan and
24 circle back"?

25 A Right.

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1 Q Do you know what she was referring to there on a
2 potential game plan?

3 A Coming from Karina Davis, the parliamentarian,
4 it would have been a game plan for the process and the
5 logistics of conducting a committee of the whole.

6 Q Do you recall a conversation where the next line
7 says, "Jennifer is going to run it by Duncan and circle
8 back"? Do you recall that conversation?

9 A Jennifer and I had many, many conversations
10 about how to make this work smoothly, efficiently, and
11 correctly. So I don't recall that specific conversation,
12 but I'm sure we had it.

13 Q Okay. And these were conversations about just
14 running the committee of the whole?

15 A You know, there are a lot of things that you
16 do, just procedural steps and logistical steps of people
17 that are involved in that sort of an event. So we
18 made -- there were -- this is a lot of planning --

19 Q Yeah.

20 A -- to make sure that each of the 31 members and
21 their staffs have the ability to have input into this
22 process.

23 Q Okay. So, moving right along, the line above
24 that, do you see an e-mail from Jennifer Fagan on
25 January 20th, 2011, at 1:41, --

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1 A Yes.

2 Q -- to others on that previous string?

3 A Yes.

4 Q Okay. It says, "Duncan wants to give Dewhurst a
5 call. What's the best way to reach him in the next 20 to
6 30 minutes?"

7 Do you recall that conversation with him,
8 or did you, in fact, call Senator Dewhurst -- or
9 Lieutenant Governor Dewhurst?

10 A I'm sure I did.

11 Q Do you recall that conversation?

12 A No, I don't.

13 Q Okay. Do you know whether it related to voter
14 ID?

15 A Well, I assume that, since it's coming through
16 the string, it probably had to do with the process of
17 what we -- you know, the committee of the whole -- what
18 did he expect from the process and things like that.

19 Q Okay.

20 A So, more likely than not, that was the subject
21 of the conversation.

22 Q Well, do you recall the specifics at all?

23 A No, I don't.

24 MR. ROSS: I'm going to be going to the
25 next one.

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1 COURT REPORTER: 20.

2 MR. ROSS: This is 20.

3 (Duncan Deposition Exhibit Number RD-20
4 marked.)

5 Q (By Mr. Ross:) Okay. Take a minute to look
6 at this document. It's marked highly confidential. It's
7 LEG 00005004. Have you ever seen this document?

8 A I saw it yesterday.

9 Q Okay. This was -- You saw it yesterday?

10 A And I may have seen it before, because it went
11 to my staff members, and typically I would sign off on
12 something before I do that.

13 Q Who is this e-mail from?

14 A Megan LaVoie.

15 Q Who is she?

16 A She was a staff person on my Senate staff --

17 Q Okay.

18 A -- or for the committee staff.

19 Q What was her role on the Senate staff?

20 A At that time, she was generally in charge of
21 communications. She was a law student.

22 Q Okay. This is from January 24th, 2011, at
23 11:25 a.m. Had the committee of the whole occurred yet?

24 A I don't think so. I don't recall what date.

25 Q Do you see the other people who this e-mail was

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1 to?

2 A Yes.

3 Q Can you read their names and tell me whether
4 you're familiar with them, please?

5 A Do you want me to read them out loud?

6 Q Yes.

7 A Debby Hansard, she was my district director in
8 the Lubbock office; Janis McCutchin, she works as a
9 district employee in the Lubbock office; Jennifer Foster
10 was the district director in Childress; John Stokes was
11 the district director in San Angelo; and Sarah Clifton
12 was a -- at that time she was a district -- she was a
13 natural resource person, but also had a territory out of
14 the Lubbock district.

15 Most of these or all of these employees
16 were employees who interfaced on a daily and regular
17 basis with constituents in the district as opposed to in
18 the Austin Capitol office.

19 Q Okay. Can you read silently -- take a review of
20 this e-mail for just a moment?

21 A (Witness reviewing document.)

22 Q Well, can you read the subject of this e-mail?

23 A I haven't finished reading the whole thing.

24 Q Oh, sorry.

25 A (Witness reviewing document.) Okay. I'm

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1 through.

2 Q Can you read the subject of this e-mail just for
3 a minute?

4 A "Subject: Voter ID talking points."

5 Q Okay. Do you regularly have communications with
6 folks like Megan LaVoie who write talking points for you?

7 A I think on different issues. These are not my
8 talking points, though.

9 Q Oh, okay. Whose talking points are they?

10 A These are -- This is information given to the
11 district staff to respond -- who will be responding to
12 questions that may come in from constituents with regard
13 to a voter ID.

14 Q Okay.

15 A And so we do this typically with major
16 legislation that we carry, TRS reform, retirement system
17 reform, different issues with regard to the budget, to
18 make sure that the people in my big old district -- I
19 have 51 counties basically -- have information consistent
20 with where we are in Austin.

21 So we keep them up so that when they
22 interface with constituents in the district, that
23 they're getting correct information to the people in the
24 district.

25 Q In case that a constituent might call in to one

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1 of the district offices?

2 A Right.

3 Q Okay.

4 A And our folks are very active in getting out in
5 the community, as opposed to just sitting in the office.
6 In fact, I don't like them to sit in the office. I would
7 rather them be in the car and going to the different
8 counties and answering questions and being proactive, as
9 opposed to reactive.

10 Q Okay. Just a couple of quick questions as we've
11 gone on to that a little bit.

12 When you -- When someone calls your
13 office, a constituent calls your office, does your staff
14 generally keep a record of that?

15 A It depends. You know, we don't keep an exact
16 log. I think there is a legislative service where you
17 can track calls if you want to. But I think, on TRS
18 reform, we tracked them probably at that point in time.

19 Q Okay.

20 A And this, I don't know if we did or not.

21 Q Okay. If you did, do you know whether that
22 would have been produced to --

23 A If we did, it would have been.

24 Q Okay.

25 A It would have been produced to the AG.

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1 Q Okay. It would have been produced, and
2 presumably they would have produced it to the Plaintiffs?

3 A It's out of my hands.

4 Q Okay. Great. Going back to these talking
5 points quickly -- sorry. I've missed my spot.

6 So it says that "Lieutenant Governor
7 Dewhurst asks Duncan to chair the committee of the whole
8 so the Senate can take up this issue this week. Moving
9 voter ID this fast isn't Duncan's doing, although he
10 believes it is an important issue and will vote for it."

11 Can you explain why the voter ID
12 legislation was moving so fast?

13 A Well, I'll give you some basics --

14 Q Sure.

15 A -- on it. With regard to whenever an issue is
16 designated as an emergency by the Governor, then that
17 basically allows the Senate to take it up earlier in the
18 session.

19 The Constitution generally says that
20 you've got to wait 60 days before you can bring up a
21 bill without a suspension of two-thirds of the Senate or
22 four-fifths of the House. So, by declaring legislation
23 an emergency, it simply allows you to bring the
24 legislation up earlier in the session.

25 Q Okay.

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1 A So given -- 2011 was a fairly significant year.
2 I don't know if you recall in your state, but in our
3 state, we were facing a \$27 billion short-fall. We were
4 dealing with a lot of redistricting issues. We were
5 dealing with a lot of different issues that were very
6 time-consuming.

7 And so moving legislation quickly was --
8 you know, it was an important priority for any bill, not
9 just this bill but any bill.

10 Q Okay. Well, it also says that you believe that
11 this was an important issue, right?

12 A Yes, sir.

13 Q And that's consistent with what you've just
14 said, right?

15 A Yes, sir.

16 Q Is the way in which this document describes your
17 role in the committee of the whole accurate?

18 A And point me to what you're referring to,
19 please.

20 Q Well, that Lieutenant Governor Dewhurst asked
21 you to chair the committee of the whole?

22 A Yes, he did.

23 Q And if you look at the next paragraph, "While
24 voter ID is a crucial issue, there are many major issues
25 the Legislature has to vote on this session, including

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1 redistricting and the budget."

2 A Yes, sir.

3 Q Is that what you were just referring to?

4 "Resolving this well-debated issue at the beginning of the
5 session will help legislators turn their focus to those
6 major issues."

7 A Yes, sir.

8 Q If you look towards the third paragraph, at the
9 bottom, the last line, "If you are 70 or over, photo ID is
10 not required (this will be phased out; you have to be 70
11 when the law is enacted)." Do you see that?

12 A Yes.

13 Q Why was the provision for voters over 70 going
14 to be phased out?

15 A I don't know.

16 MR. SWEETEN: I will just assert a
17 legislative privilege. Go ahead, Senator.

18 A I don't recall what that was about.

19 Q (By Mr. Ross:) Okay. Do you recall whether
20 there was -- as enacted, that SB 14 included an exemption
21 for people over 70?

22 A I don't remember. I would have to look, to be
23 accurate.

24 Q Okay. I'm going to show you -- oh, let me cover
25 this real quick.

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1 There's also, at the bottom, the last
2 paragraph: "There will be education and notice of the
3 new law before the" -- is that before the bill takes
4 effect?

5 A I guess so.

6 Q Do you know whether that was included in the
7 final bill?

8 A I think it was.

9 Q Do you see, "As the bill is written now, the
10 first election using this new law will be the 2014 primary
11 election"?

12 MR. SWEETEN: I think it's 2012.

13 MR. ROSS: Oh, excuse me. 2012. Yes.
14 I'm sorry.

15 A That's what it says.

16 Q (By Mr. Ross:) Do you know if that provision
17 was ultimately included in the law?

18 A Well, I think there were various delays that
19 occurred in the final implementation. So I would assume
20 that that was the -- that was probably in the original
21 file version. I don't know what ended up in the final
22 bill.

23 Q I'll ask you a little bit --

24 A I think that's what -- I believe that's what
25 started as the final bill.

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1 Q I'll ask you a couple of questions about that.

2 MR. ROSS: I want to mark RD-21.

3 (Duncan Deposition Exhibit Number RD-21
4 marked.)

5 Q (By Mr. Ross:) Have you seen this document
6 before?

7 A I don't normally see them. It's just a -- It's
8 the notice which is posted down in the -- it's the
9 official posting of a hearing of a committee, which, of
10 course, we would do every week for the State Affairs
11 Committee.

12 And so I didn't always -- I didn't see
13 these routinely.

14 Q Okay. And what is this notice of a public
15 hearing for?

16 A This was the notice of the public hearing for
17 Senate Bill 14 relating to "the requirements to vote,
18 including presenting proof of identification, providing
19 criminal penalties."

20 Q And can you tell me what time and date it was
21 set for?

22 A The committee of the whole was scheduled for
23 1:30 p.m. on Monday, January 24th, 2011.

24 Q And is that your understanding of when it took
25 place?

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1 A Well, that's -- I don't recall any delays. It
2 might not have started exactly at 1:30, but I believe it
3 started generally in that time frame.

4 Q Great. Do you see sort of in the middle of the
5 page, where it says, "The committee will hear invited
6 testimony only on SB 14"?

7 A Yes.

8 Q Do you recall whether you invited anyone to
9 testify at that hearing?

10 A I don't know that I did or not. I know usually
11 I rely on the author of the bill, but sometimes we would
12 do it on different bills. I don't recall on this one
13 that we invited our committee-appointed experts. No.

14 Q Okay. Do you remember who was invited to speak
15 at that committee?

16 A The record would have to reflect that.

17 Q Do you recall whether or not -- well, let's
18 start with this.

19 Have you ever heard of an organization
20 called "True the Vote"?

21 A I have heard of them.

22 Q What have you heard? What do you know about
23 them?

24 A I was asked about them in my last deposition,
25 and that's about as much as I know of that organization.

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1 It seems like maybe in later days, in the news, I think
2 I've seen them. They may be involved in the income tax
3 issue that's going on in the Federal Government, denial
4 of 501. I'm not sure if they are. I think that's -- but
5 I do not know that individual -- that organization
6 generally.

7 Q Have you heard of the King Street Patriots?

8 A I have.

9 Q What do you know about that organization?

10 A Nothing other than they are a -- I would say an
11 organization -- a fairly -- a very conservative
12 organization.

13 Q Okay. Do you know whether -- Do you know who
14 Catherine Englebrecht is?

15 A No. I've heard of her name, but I don't know
16 her.

17 Q Do you remember what you heard?

18 A Relating to one of these committees.

19 Q Okay. She --

20 A They may have testified at the first hearing a
21 long time ago. I don't know. I don't know for sure.

22 Q You don't know whether or not they testified?

23 A I just don't know them. So it wouldn't be in
24 my memory bank, whether they testified or not, unless I
25 saw the name.

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1 Q Okay. And it's your understanding that if they
2 did testify at the committee of the whole on SB 14, based
3 on this notice, it would have been by invitation?

4 A If they did testify, I think so.

5 Q Do you remember whether you heard from True the
6 Vote --

7 A No, sir.

8 Q -- in regards to SB 14?

9 A I don't remember if I did or not.

10 Q Do you remember if you heard from the King
11 Street Patriots?

12 A I don't know.

13 Q Do you remember hearing from any sort of
14 organization constituent about SB 14?

15 A There were a lot of generally partisan
16 organizations that, you know, take interest in these
17 types of issues. Anything involving elections, you're
18 going to have organizations that evolve around Republican
19 politics and organizations that revolve around Democratic
20 politics that take an interest in these types of
21 legislation, as they did in 2007 and 2009, and I assume
22 they did here at this time, too.

23 Q Okay. Great. But are you aware of whether you
24 received any e-mails from True Vote?

25 A I don't know.

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1 Q Any letters?

2 A I don't know.

3 Q Phone calls?

4 A They would be in the records.

5 Q Okay. Let me turn to --

6 MR. ROSS: This is 21?

7 COURT REPORTER: 22.

8 MR. ROSS: We're on a roll.

9 (Duncan Deposition Exhibit Number RD-22
10 marked.)

11 Q (By Mr. Ross:) Then I will hand you 22, if you
12 want to take that. Are you familiar with this document?

13 A I was at the time I received it.

14 Q Can you take a look at the bottom of the
15 document, where it says -- from the one that's dated
16 January 21st, 2011, at 17:41. So it was 5:41 p.m.

17 A Are you talking about who signed it?

18 Q No, no. I'm actually looking on the cover page,
19 the e-mail.

20 A Okay.

21 Q Yes, sir.

22 A Okay. I'm sorry.

23 Q It was from --

24 A Leticia Van de Putte, Senator Van de Putte.

25 Q To --

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1 A To me -- no -- for Jennifer Fagan. I'm sorry.

2 Q Oh, at the bottom, it says to "opie," O-P-I-E?

3 A That's me.

4 Q That's you. Okay. And then we're turning to
5 the second page, and this is marked highly confidential.

6 It's Bates-stamped TX 00204742 to 44. Can you tell me
7 what this is?

8 A The one that begins with 743 --

9 Q Yes. 743.

10 A -- dated January 21st? It's a letter from
11 Leticia Van de Putte to me.

12 Q Okay. And you're familiar with this document?

13 A I was at the time.

14 Q Okay. Will you take a moment briefly to just
15 flip through it real quickly?

16 A (Witness reviewing document.)

17 Q Do you see --

18 A I am not that fast. (Witness reviewing
19 document.) Okay.

20 Q Okay. Do you see the first paragraph, it says,
21 "I want to reiterate our deep concern for the timing of
22 the public hearing on voter ID legislation"?

23 A Yes.

24 Q Do you recall what her concerns were regarding
25 the timing of the public hearing on the voter ID

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1 legislation?

2 A They were stated in the letter.

3 Q And reviewing this letter now, do you know --
4 based on the letter and your memory, do you recall what
5 those concerns were?

6 A I would just rely on the letter.

7 Q So, I guess, if you look at the second
8 paragraph, where Senator Van de Putte says that
9 "Lieutenant Governor, fully aware that most, if not all,
10 of the senators had left town on Thursday (if not
11 Wednesday afternoon), waited until very late in the day
12 Thursday to deliver a letter to Senators, literally
13 slipping it under most office doors after hours," do you
14 recall that?

15 A That's stated in the letter. I don't know how
16 they delivered it.

17 Q Okay. But are you -- you're not familiar with
18 that having occurred?

19 A I'm saying she stated that, and that I do not
20 know when they delivered letters to all 31 members. So,
21 you know, I would -- I don't doubt that that's what
22 happened to her. I don't know what happened to the other
23 members.

24 Q Okay. Do you recall that your earlier testimony
25 was that the purpose of the committee of the whole was so

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1 that all members had an opportunity --

2 A Right.

3 Q -- to address this? Is it fair to say, given
4 the concerns raised by Senator Van de Putte, that some
5 senators felt that they did not have enough time to
6 address the concerns around SB 14?

7 A I think one of the things that we did -- and I
8 will say that Senator Van de Putte expressed that
9 concern.

10 Q And are you -- you are aware that Senator Van de
11 Putte expressed that concern?

12 A Right. She sent me the letter.

13 Q Okay. And I guess, looking at the next
14 paragraph then, it says, "Please understand the stark
15 contrast to the previous session two years ago, when
16 Senators knew a month or more in advance that a full
17 hearing on this legislation would take place."

18 Does that reflect your recollection of
19 what happened in the previous session in the 2009?

20 A Well, I thought we had a fairly robust hearing,
21 and at that time, there were also all sorts of -- a week
22 wasn't long enough, but typically our rules require we
23 post for 24 hours, and many times, that what we do at the
24 end of the session. Especially in the beginning, maybe
25 we post -- you know, typically, generally, on the

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1 standing committee, we would post a little bit more than
2 that.

3 But this is not -- this time period is
4 not out of the ordinary for when we were going to post
5 the bill, but I think we also used the record from 2009,
6 and everyone agreed to make that a part of the record
7 for the 2013 hearing.

8 Q Okay.

9 A We had -- you know, I think there was -- well,
10 that's all.

11 Q Go ahead.

12 A I think she said we had a candid discussion.
13 She and I did talk about these sorts of things.

14 Q And do you recall that conversation?

15 A No, but I have a good relationship with Senator
16 Van de Putte. I have a lot of respect for her.

17 Q Do you have any reason to believe that the
18 concerns that she expressed in the letter were inaccurate
19 or --

20 A Well, I mean, they were her concerns. I'm not
21 going to challenge her belief, just like I'm sure she
22 wouldn't challenge mine, but I think, I mean, it's
23 just -- that was her concern, and we certainly had
24 discussions about it.

25 Q Do you see the next Page 744, which is the

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1 ending numbers for the Bates, there is a second paragraph,
2 towards the last sentence, where it says, "In previous
3 legislative sessions in which we have preserved the
4 two-thirds rule, all the senators representing districts
5 in which minority voters are playing a determinative role
6 in electing the Senator of their choice did indeed block
7 legislation designed to achieve the same result, blocking
8 the bill."

9 A I'm sorry. I was -- I didn't find that. Right
10 here, I see now.

11 Q Yeah. The second paragraph, the last sentence
12 there, where she says -- can you read that to yourself?

13 A Yes, I see that.

14 Q Okay. Is that an accurate -- here -- an
15 accurate statement in terms of which senators voted
16 against getting rid of -- suspending -- excuse me -- the
17 two-thirds rule?

18 A I'm not going to adopt anything in there with
19 regard to anything, other than there was -- there was a
20 voter ID bill. We've talked about House Bill 218, and
21 that didn't pass because of the two-thirds rule. And so
22 I recognized that.

23 Q And are you aware of who voted against that?

24 A I think we've talked about that earlier in the
25 day.

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1 Q Okay. And is it fair --

2 A The record reflects that very clearly.

3 Q Is it fair to say that senators who were from
4 majority/minority districts voted against SB -- or excuse
5 me -- the 2009 voter ID legislation?

6 A I'm not prepared to agree with that statement.

7 Q Okay.

8 A I don't have enough information to agree with
9 that statement.

10 Q Do you have any reason to believe that convening
11 the committee of the whole was called to circumvent the
12 concerns raised by Senator Van de Putte about the
13 two-thirds rule?

14 A I don't believe it was. I believe that the --
15 well, let me go back. I believe the special order allows
16 a bill to be brought up out of the regular order of
17 business. That does not require suspension.

18 So, to the extent the committee of the
19 whole process, as it relates to voter identification
20 bills, complies with that rule, it can be brought up out
21 of order.

22 Q Okay.

23 A And it does not require 21 votes.

24 Q Do you remember --

25 MR. ROSS: Strike that.

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1 Q (By Mr. Ross:) Do you remember how many times
2 the committee of the whole has been called in the last
3 five years?

4 A In the last five years?

5 Q Yes.

6 A I've been in the Senate for -- I was in the
7 Senate for 16 or 17. I can't remember. Time flies,
8 but --

9 Q Well, in the 16 or 17 years --

10 A -- I recall typically on issues like
11 redistricting or something like this, that is a very
12 controversial type of -- sometimes even a partisan-type
13 issue -- that those would be committee of the whole
14 issues.

15 I think a long time ago worker's comp was
16 heard as a -- it was a very controversial party lines
17 sort of issue, well, back in '89, and I think -- if I
18 remember correctly -- and I might could be corrected,
19 but I was working in the Senate at that time. But I
20 remember that there was a committee of the whole
21 convened to hear that issue.

22 And there may have been others. But, in
23 the last five years, probably, if you want to confine it
24 to that period --

25 Q Just the last five years, do you remember the

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1 committee of the whole --

2 A Probably -- It's probably these two bills. It
3 may have been a redistricting bill. I don't remember.

4 Q And the last ten years?

5 A Well, I'm saying redistricting -- I remember
6 some committees of the whole. They're not all that
7 exciting. But there have been more than just for this.

8 Q Okay. Would it be fair to say that in the
9 last -- well, in the last five years, you only recall the
10 photo ID related committee of the whole?

11 A Right.

12 Q Okay.

13 A But, remember, five years in the legislative
14 cycle is pretty short, really.

15 Q Well, in the last ten years, you only recall
16 photo ID and perhaps redistricting?

17 A Yeah. Perhaps workers' comp. I don't know. I
18 mean, there have been -- there may have been other
19 committees of the whole.

20 Q Okay.

21 A It's not -- It's not that unusual.

22 Q Do you recall if you responded to this letter
23 from Senator Van de Putte?

24 A I don't know if I responded in writing or
25 whether I just called her, and we talked about it.

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1 Q Do you remember, if you had a conversation, what
2 that conversation might have been?

3 A No.

4 Q Do you recall when you might have had it?

5 A We had -- I know we had a conversation
6 immediately prior to the letter, because she refers to
7 it.

8 Q Do you recall that conversation at all?

9 A No.

10 Q Did you take her concerns seriously?

11 A I always take Senator Van de Putte's concerns
12 seriously.

13 Q Do you recall if you tried to address them in
14 any way?

15 A I'm sure I did in some ways. I couldn't
16 address them 100 percent. Chairman can't -- you just
17 can't do that sometimes. Sometimes you've got different
18 perimeters that you have to try to move within.

19 And so there is -- and so -- but I
20 listened to Senator Van de Putte, I think, a lot of her
21 judgments and opinions, and I tried to accommodate her
22 probably in more ways than I could recall here.

23 But I do believe there were discussions
24 about how we could bring the record forward with regard
25 to the invited testimony and that sort of thing. The

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1 members were really -- at that point in time, you know,
2 we pretty well -- there wasn't a lot of turnover between
3 2009 and 2011, and the members were very familiar with
4 this issue.

5 Q Okay.

6 A So it wasn't like -- if there was new evidence
7 that needed to come forward, that we wanted to allow it,
8 and that's why we had invited testimony to allow that to
9 happen.

10 Q Okay.

11 MR. ROSS: We'll do 23, which is marked
12 highly confidential, TX 00204747.

13 (Duncan Deposition Exhibit Number RD-23
14 marked.)

15 Q (By Mr. Ross:) Are you familiar with this
16 document?

17 A (Witness reviewing document.) Okay.

18 Q Are you familiar with this document?

19 A Okay. No, I'm not, but this is the first time
20 I've seen it, other than, I guess, maybe the one from
21 Leticia to me that starts the string out, or thread, or
22 whatever you want to call it. But I don't think I got
23 the rest of it.

24 Q Do you see sort of the second e-mail from the
25 bottom from Jennifer Fagan to Blaine Brunson, Julia

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1 Rathgeber, and Janice McCoy, sent at 18:05 on
2 January 21st, 2011, --

3 A Uh-huh, yes, sir.

4 Q -- where she says, "Duncan and I are still
5 discussing it"?

6 A Right.

7 Q Do you recall what you discussed with her?

8 A No, but I received a letter from Senator Van de
9 Putte, raising concerns and issues, and I was discussing
10 them, I'm sure, with Jennifer, "How do we address those
11 concerns?"

12 Q But you don't recall the specifics of any
13 conversation?

14 A No.

15 Q Okay. Do you see it's where -- the e-mail at
16 18:48, on the 21st, where it says, "Left it that they
17 would talk again over the weekend -- probably on Sunday"?

18 A Yes.

19 Q Do you recall what conversations Ms. Fagan is
20 referring to?

21 A More likely than not, a conversation that I
22 would have had with the Senator; that she expected that I
23 would have with Senator Van de Putte over the weekend.

24 Q Do you recall -- Do you remember if you had that
25 conversation?

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1 A No. I probably did. I just don't remember the
2 conversation.

3 Q Do you see how it says, "As of now, he wants to
4 move ahead as planned"?

5 A Right.

6 Q Does that sound familiar to you?

7 A Yes, sir.

8 Q And do you see -- well, do you recall why he
9 wanted to move ahead as planned?

10 A I don't recall today. I mean, I typically like
11 to move things on, because it's a matter of managing --
12 the legislative process is primarily a matter of managing
13 large complex issues, and the more you wait, the issues
14 all converge.

15 And when you take on an issue like voter
16 ID up front, especially in January, the members are not
17 as occupied with other issues as they are when you get
18 into February, March, April, or May.

19 So it was my view -- and there were
20 several things that were put on the emergency agenda
21 that session. I don't remember all of them.

22 But the last session before, there was
23 controversy. The House stalled the bill, killed a lot
24 of legislation in the process of doing that. And so
25 there was, I think, an interest in moving forward to try

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1 to give the House plenty of time to debate this issue,
2 because they never really got to debate that issue on
3 the House floor that year. I think that year, in 2009,
4 it never reached the floor.

5 And so my process, thought process, was
6 generally, "Let's get -- Let's move this. We've heard
7 this." We had a good -- We had a good, long, heavy
8 robust debate on this issue in the Senate in 2009.

9 And by moving the record forward and
10 allowing invited testimony to augment that record, if
11 necessary, would have -- in my view, was a reasonable
12 and legitimate way to move this bill forward and to
13 allow the process to work.

14 Q And it was your prior testimony that this robust
15 discussion in 2009 was over SB 362?

16 A Right.

17 Q And SB 362 included non-voter ID?

18 A Right.

19 Q Do you see, at the top of this e-mail chain,
20 from Julia Rathgeber to Jennifer Fagan at 7:20 p.m., --

21 A Right.

22 Q -- January 21st, where it says, "It doesn't
23 leave much room for negotiation"?

24 A Yes, I see that.

25 Q Do you know what that means?

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1 A I have no idea.

2 Q Do you know why there was no room for
3 negotiation?

4 A I have no idea what that means or why that
5 would have been a thought that she had.

6 Q Okay. Could it have been negotiations between
7 you and Senator Van de Putte?

8 A I have no idea.

9 Q Okay.

10 A Typically, Van de Putte and I negotiate well.

11 Q Okay. Do you recall any conversation -- any
12 negotiations between you and Senator Van de Putte over the
13 weekend?

14 A I don't recall, but the process, you know,
15 ended up -- we came up with a process. And, you know,
16 I'm sure that -- you know, in the legislative body,
17 people don't always agree, believe it or not. And so,
18 you know, we may or may not have agreed, but we tried to
19 reach some sort of consensus, at least, about going
20 forward.

21 I don't know what her position is on
22 that. I know that, at least in my mind, I felt
23 comfortable in moving forward, based on my conversations
24 with various members of the Senate and an informal --
25 you know, basically, an understanding of: We want to

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1 move this -- this is a divisive issue. We have many
2 other divisive issues. We have been through this one
3 before, and we pretty well know what these issues are.

4 To the extent we need additional invited
5 testimony, we'll have it. And so we did that. And I
6 don't recall exactly -- this was a much shorter hearing
7 than the one that we had in 2009, but I don't think
8 there was much -- I don't recall much objection about
9 that being done more efficiently. There may have been
10 some objection about the timing, but not efficiency of
11 the hearing.

12 Q Okay. I just want to very quickly go back to
13 the prior exhibit that we entered in these piles of
14 exhibits. Let me have a quick second on this.

15 MR. ROSS: Sorry. Can we go off the
16 record for just a minute? Thank you.

17 (Short break taken.)

18 MR. ROSS: We're back on the record.

19 Q (By Mr. Ross:) We're looking at RD-14. Do you
20 recall talking about this e-mail earlier --

21 A Yes, sir.

22 Q -- regarding the request from Jennifer Fagan to
23 Ann McGeehan --

24 A Yes.

25 Q -- and the Secretary of State's office for

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1 Hispanic surname voters?

2 A Yes.

3 Q So it was your testimony earlier that the raw
4 data on Latino registered voters would not be helpful in
5 determining the impact of SB 14; is that correct?

6 A I think that summarizes what I said.

7 Q Okay. Would it have been helpful to know -- to
8 have a comparison between the DPS database and the
9 registered voters with Latino surnames who did not have
10 photo IDs?

11 A Well, if you knew that, if you had some way to
12 know that. I don't know that this information that's
13 being requested asks for that information. It just
14 basically said, "We can identify voters with Hispanic
15 surnames, but that's all we can do."

16 So, you know, I'm not sure -- I don't
17 know whether or not we got that information, but even if
18 we got that information, my testimony is: I'm not sure
19 that raw data alone would be beneficial.

20 Q So it's your testimony that it would not be
21 helpful to know the number of Spanish surname voters who
22 did not have photo IDs -- DPS-issued photo ID?

23 A Well, this does not ask for that information.
24 It does not ask for information related to that. It only
25 asked for raw data, and she says the raw data is not

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1 complete.

2 Q Okay. And by -- I'm sorry.

3 A So that's what I read that as saying to me.

4 Q And just to clarify, what do you mean by raw
5 data?

6 A Just the names of voters with Hispanic
7 surnames.

8 Q So you're saying just the list of registered
9 voters with Spanish surnames would not be helpful; is that
10 your testimony?

11 A Right. It's raw data.

12 Q Is it your understanding of whether or not a
13 comparison between voters with Spanish surnames and people
14 who have DPS-issued photo IDs was ever conducted.

15 A That's not what -- I don't know if it was or
16 not, but that's not what this request for information --

17 Q Yeah.

18 A -- asks for.

19 Q Well, regardless of what this asks for, are you
20 aware of whether or not that analysis was ever done?

21 A I don't know if any of the proponents or
22 opponents of the bill asked for that analysis.

23 Q Do you know if an analysis might have been done
24 in connection with seeking preclearance for SB 14?

25 A You know, I do not know. I was not involved in

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1 the preclearance process. So it may have been, but I
2 don't know.

3 Q Okay. Just very quickly, are you familiar with
4 what I'm referencing when I talk about preclearance?

5 A Yes.

6 Q Okay. And is it your understanding I'm talking
7 about preclearance under Section 5 of the Voting Rights
8 Act?

9 A Exactly. Yes, sir.

10 Q And are you familiar with the retrogression
11 standard under Section 5 of the Voting Rights Act?

12 A I know there is a standard. I am not an expert
13 on that area of the law.

14 Q Okay. But you are -- generally, you are
15 generally familiar with the standard?

16 A I'm generally familiar that there are
17 standards.

18 Q Okay. Fair enough. So, before SB 14 was filed,
19 are you aware of any analysis of the likely impact on
20 voters was conducted?

21 A Again, you know, whether or not the proponents
22 or opponents of the bill conducted that, it would be --
23 if they did and they presented it, it would be in the
24 records.

25 Q If it had shown that Spanish surname voters were

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1 less likely to have SB 14 -- or excuse me -- DPS-issued
2 IDs, would that affect your view of the bill?

3 A I don't know that that was ever determined, so
4 it's so hypothetical. Yeah. And the degree and the
5 statistical relevance of that, I would have to see that.
6 I don't know or recall ever seeing that information --

7 Q Okay.

8 A -- to the extent it was presented at the
9 hearing.

10 Q Do you know if there was any analysis conducted
11 for specific voters, for minority voters, African-American
12 voters, in particular?

13 A Again, I'll say I don't know if the proponents
14 or opponents of the bill -- I can't recall whether or not
15 they presented evidence in the record to that effect.
16 The record will speak for itself on that.

17 Q Do you know, at the time the SB 14 was passed,
18 what portion of the public is least likely to own photo ID
19 documents?

20 A I don't know that I have that specific
21 knowledge. I don't recall whether someone put it in the
22 record or not. It may have been, but I don't recall
23 specifically that data.

24 Q Okay. Are you aware of whether or not poor
25 voters are less likely to have photo ID documents?

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1 A No, I'm not.

2 Q Okay.

3 A No, I'm not.

4 Q Do you know whether minority voters -- and by
5 that, I mean black and Latino voters, in Texas, are more
6 likely to be poor?

7 A I don't recall -- that may have been anecdotal,
8 or there may have been testimony to that effect in the
9 record. I don't recall that specific testimony in the
10 record.

11 Q Well, outside of the record, are you aware of --

12 A I don't --

13 Q -- whether African-American voters are more
14 likely to be poor?

15 A I have not conducted any individual studies or
16 asked -- or commissioned any on my own for that type of
17 work.

18 Q Are you aware whether the Latino voters might be
19 more likely to be poor in Texas?

20 A Same answer.

21 Q Was that relevant to your consideration of
22 SB 14?

23 MR. SWEETEN: Objection; legislative
24 privilege.

25 A The relevance was the evidence that we received

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1 in the record, and, generally, my independent judgment as
2 to whether or not this was good policy for the State of
3 Texas.

4 Q Okay. And what was your judgment of that?

5 A Well, my judgment was that the requirement of a
6 voter ID for the purpose of preventing voter fraud was
7 good policy and policy that should be implemented in the
8 State of Texas.

9 Q And it was your previous testimony that it was
10 good policy because it prevented vote harvesting, is that
11 right, --

12 A Well, I think --

13 Q -- or voter registration card harvesting?

14 A Well, it was my testimony -- and the record
15 will speak for -- what I said is in the record, --

16 Q Okay.

17 A -- and I stand by it.

18 Q I mean, earlier today.

19 A Right. That's what I'm saying.

20 Q That's fair enough.

21 A That's what I'm saying.

22 Q Do you know whether or not -- well, is it your
23 opinion that requiring someone to show non-photo ID would
24 have prevented this kind of vote registration card
25 harvesting that you're concerned about?

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1 A I don't really know the answer to that. I
2 would take the position that a photo ID would be probably
3 the best way to provide a -- provide for integrity of the
4 ballot box.

5 Q And your previous testimony was that you
6 supported SB 362 for the same reason that you supported
7 SB 14 for these concerns about voter registration card
8 harvesting, right?

9 A The primary concern I had was that under the
10 old law, a person could present a voter registration
11 card, and it would not matter -- there was no
12 enforcement -- no effective enforcement of being able to
13 ensure that the person who held that card and presented
14 the vote was the person that actually was able to vote,
15 and what I would call rather informal enforcement
16 processes that we have, with election judges and non-law
17 enforcement people at polling places, and that sort of
18 enforcement was inadequate.

19 And, anecdotally, understanding that
20 there are situations where people do gather up voter
21 registration cards and can easily gather voter
22 registration cards and use those for purposes of voter
23 fraud, in my view, is a real problem, a real threat as
24 to the integrity of the ballot box, and one that can be
25 very easily, and with common sense, and I think with

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1 support of most people, with the requirement of a -- you
2 know, it's not -- it's appropriate, and I think an
3 effective way to provide an effective and efficient way
4 to provide integrity at the ballot box to prevent those
5 types of -- that type of fraud.

6 Q Okay. Do you think allowing --

7 A And I'm sorry for the long answer. There's
8 probably a lot of fragmented sentences in that.

9 Q No. I appreciate that.

10 A I was trying to recollect and pull together
11 what I had earlier testified to.

12 Q No. I appreciate that, too. And you support --
13 your position supporting SB 362 was to address those
14 concerns, correct?

15 A That was my position.

16 Q Okay. And you supported SB 362 to include a
17 non-Federal ID, correct?

18 A I did.

19 Q So is it your position now that SB 362 would
20 have addressed those concerns -- would have adequately
21 addressed those concerns?

22 A It would have addressed those concerns.

23 Q Do you know -- what about -- sorry. I don't
24 want to waste time, so I'm just going to ask you quickly.

25 Are you aware of whether prior photo ID

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1 laws or bills -- excuse me -- permitted Texas -- excuse
2 me -- driver's licenses from outside of Texas?

3 A I don't remember that.

4 Q Would you have supported a bill that permitted
5 the use of non-Texas driver's licenses?

6 A I don't know. I would have to think about
7 that.

8 Q Okay.

9 A I would have to think about that.

10 Q We'll come back to that if we have time. I have
11 a couple of more questions.

12 Were you aware of any instances of a
13 in-person voter impersonation in 2009?

14 A I recall some discussion about a person who
15 had -- actually, someone testified on the record that
16 they had a stack of voter registration cards, and
17 basically, they were passing them out at some point. And
18 so -- And I think that's easily done.

19 And, again, looking at history in Texas,
20 there has been voter fraud in Texas before, and you
21 can't -- it's difficult to prove, and the best way to
22 avoid it is to provide a process or a system that deters
23 that by, in my view, a simple requirement of providing a
24 voter photo ID, which most people have, for whatever
25 reason. It is the most reasonable way to deter voter

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1 fraud.

2 Q Just one second.

3 (Off the record discussion ensued.)

4 MR. ROSS: Back on the record.

5 Q (By Mr. Ross:) So it's on the record about this
6 person who brought the stack --

7 A It should be. You know, it's easy if you think
8 about it.

9 Q Do you know what happened to the person?

10 A No.

11 MR. ROSS: I'm going to mark --

12 COURT REPORTER: 24.

13 MR. ROSS -- RD-24.

14 (Duncan Deposition Exhibit Number RD-24
15 marked.)

16 Q (By Mr. Ross:) This RD-24, the Senate Journal
17 on the 26th of January, 2011, I believe that was marked as
18 536 in your prior deposition. Turn to Page 123. Do you
19 see Section Floor Amendment Number 19?

20 (Off the record discussion ensued after
21 power outage.)

22 MR. ROSS: Back on the record.

23 COURT REPORTER: You may need to ask that
24 last question again.

25 Q (By Mr. Ross:) So, looking at Page 23 of the

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1 Senate Journal, if you will look in about the middle of
2 the page, it's Section Floor Amendment 19, Number (1)
3 there?

4 A Yes, sir.

5 Q It says, "Amend SB 14, as follows, to allow "for
6 a person who is a student at an accredited public
7 university located in the State of Texas, a student
8 identification card that contains the person's photograph
9 that has not expired issued to the person by the
10 institution of higher learning." Do you see that?

11 A Yes.

12 Q Do you see right below that, where it says,
13 "Amendment to 14 was read," and on motion of Senator
14 Fraser, it was tabled?

15 A Right.

16 Q Do you see the yeas and nays in there?

17 A I do.

18 Q Do you see your name?

19 A Yes.

20 Q Do you recall why you voted --

21 MR. SWEETEN: Objection; legislative
22 privilege. You can answer.

23 A No.

24 Q (By Mr. Ross:) Do you recall voting to table
25 other amendments as to SB 14?

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1 A I will go on the record on that.

2 Q Do you recall why you voted to table any other
3 amendments?

4 A No.

5 Q Let's move on from this document unless --

6 A I see -- what page are you looking at?

7 Q I'm on 123. Okay. I think we're done with this
8 document. Oh, actually -- excuse me.

9 Can we go to page -- I think it's the next
10 Page 124. Do you see 124, where Senator Davis offered
11 Amendment 21?

12 A Yes.

13 Q Do you see where it says, Paragraph (5), "a
14 valid" -- amending SB 14 to allow for "a valid
15 identification card, including an employee identification
16 card, that contains the person's photograph and is issued
17 by an agency or institution of the Federal Government"?

18 A Yes, I see that.

19 Q "And an agency, institution, or political
20 subdivision of this state, or an institution of higher
21 learning in the state." Do you see that?

22 A "Higher education in the state." Yes, sir.

23 Q Excuse me. "Institution of higher education in
24 the state."

25 Do you see that the amendment to SB 14 is

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1 read, and on a motion from Senator Fraser, Amendment 21
2 was tabled by a vote of 19 yeas and 11 nays?

3 A Yes.

4 Q Do you see the yeas list?

5 A Yes.

6 Q Do you see your name?

7 A Yes.

8 Q Do you recall why you voted yea to table that
9 amendment?

10 MR. SWEETEN: Objection; legislative
11 privilege.

12 A No.

13 Q (By Mr. Ross:) Do you see amendment -- excuse
14 me. Turn to Page 30, please.

15 A Page 30?

16 Q Yes, sir.

17 A Go back to Page 30?

18 Q Oh, 130. So you were at 124, I think.

19 A Okay. 130. Okay.

20 Q I believe this was Duncan Exhibit 536 on the
21 prior deposition. We had mentioned that earlier on Floor
22 Amendment Number 30. Do you see that?

23 A Yes.

24 Q Can you look for me, Senator Duncan, where it
25 says -- I'm sorry -- Paragraph (7) of that amendment, "an

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1 analysis by a subgroup of whether the enhanced
2 identification requirements for being accepted to vote
3 produce a disparate impact on women, the elderly, persons
4 with disabilities, students, or racial and ethnic
5 minorities."

6 A I see that.

7 Q Do you see how Amended 14 was read, and on a
8 motion from Senator Fraser --

9 A Right.

10 Q -- the amendment was tabled --

11 A Yes, sir.

12 Q -- by 19 yeas and 11 nays? Do you see the yeas
13 on the next top of 131?

14 A Yes, sir.

15 Q Do you see your name --

16 A Yes, sir.

17 Q -- in that list of yeas?

18 A Yes, sir.

19 Q Do you recall why your name was -- why you voted
20 to table that amendment?

21 A You know, again, when you're at a --

22 MR. SWEETEN: Objection; privilege. Go
23 ahead.

24 A There are numerous amendments that are voted on
25 in committee, but this one, I don't remember the reasons

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1 why particular -- I've already stated, though, the
2 reasons why, on many of those amendments, I would vote no
3 or just go with the author of the bill and trust his
4 judgment on whether or not that meets the bill. On this
5 particular amendment, I've previously testified.

6 And I want to be clear that I do not
7 believe that the Secretary of State's office is the
8 right -- the right agency to be able to make a State
9 finding on whether or not -- which would be a judicial
10 finding, more or less, with regard to disparity impact.

11 Now, as far as reporting data and things
12 like that -- but part of this requires them to be -- to,
13 more or less, make a determination that would require
14 some discretion with regard to a quasi-judicial
15 function. To me, it would have been the inappropriate
16 agency to do this.

17 Q If an appropriate agency, whether in conjunction
18 with the Secretary of State or other Texas agencies was
19 asked to produce a report showing the number of women who
20 didn't have SB 14 required ID, would you have supported
21 that amendment?

22 A The data -- The data does not bother me. I
23 mean, the data would be -- it's just not a -- that's not
24 an issue. The issue is: How do you analyze the data and
25 what judgment is passed on that data?

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1 And so data can be produced and actually
2 acquired, but the issue is: What do you do with that
3 data? What is the integrity of the process that it goes
4 through, becoming the analysis of the data, and that's a
5 matter of deliberation.

6 And you have the bill, and you have one
7 side that says, "This does have an impact," and one
8 expert will say it doesn't. And so it's up to the
9 legislative body, as designed by the Constitution, to
10 deliberate on those issues and make that determination,
11 or a Court to do that, make those determinations.

12 But the Secretary of State's office is
13 not staffed nor appropriated with sufficient funds to
14 conduct this type of study. So that would be a reason
15 why that amendment would have been inappropriate.

16 Q Okay. Do you include in that data having data
17 on a number of people who did not have SB 14 ID? Do you
18 believe that's helpful data to have at that time?

19 MR. SWEETEN: Objection to legislative
20 privilege. I'm going to object to the incomplete
21 foundation, and objection to speculation. Go ahead.

22 A I don't know that it would be helpful or not.

23 Q (By Mr. Ross:) Okay. Fair enough. We'll move
24 on from that. Let me go briefly back to student IDs.

25 You're presently the Chancellor of the

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1 Texas Tech University system; is that correct?

2 A Yes.

3 Q Do you know how students get student IDs at
4 Texas Tech; how a person would get a student ID?

5 A They go over to the ID office, and they check
6 their matriculation number, and then they issue the ID.

7 Q Okay. Do you know -- So you would have to be a
8 student at Texas Tech in order to get a student ID; is
9 that correct?

10 A At the time you applied for it.

11 Q And do you know whether someone would have to go
12 through the process in order to confirm that they are a
13 student in order to -- excuse me.

14 A The lady looks it up on the record.

15 Q Uh-huh. And they just look through the record?

16 A Here is your -- can you show me your ID? And
17 the lady looks it up on the record, and basically she
18 takes a picture, and then gives you the ID.

19 Q Okay. Do you know how you get on this registry
20 that you're talking about?

21 A No. I've only been here six weeks.

22 Q Okay. Fair enough. Are you aware of what
23 student IDs may be used for at Texas Tech?

24 A Admission to certain events and probably other
25 aspects of benefits and things like that, scholarships

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1 and financial aid. And in an account like that, they
2 need probably identification numbers. I'm speculating a
3 little bit here, but having not been a student for
4 several years --

5 Q Do you know whether the students can use their
6 ID to access money, like financial information?

7 A Well, I think, more likely than not, they have
8 to have an ID to access student financial aid, and they
9 have certain electronic identification primarily for
10 that.

11 And, in fact, the old card, as we had it,
12 when we were in school, when you were in school, is
13 probably less important today than the internet or
14 computer ID numbers that students receive to access --
15 or their parents -- to receive access of their academic
16 record or to access their financial aid records. So
17 this little card that you get is probably less important
18 today than it was 10 or 15 years ago.

19 Q Okay.

20 A In fact, I don't even -- I got one, but I don't
21 know where it is.

22 Q Do you know whether -- Are you aware of how many
23 out-of-state students there are at Texas Tech University?

24 A How many -- I'm sorry. I didn't hear you.

25 Q How many students who are not from Texas, at

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1 least not prior to --

2 A Quite a bit of international students, as well
3 as students who come in from other states.

4 Q And do you know whether those students are
5 allowed to -- are allowed to vote while they live here in
6 Texas as long as they're citizens and over the age of 18?

7 A As long as they register and they are -- and
8 they establish proper residency in accordance with the
9 Election Code.

10 Q Let me show you what I would like to mark as RD
11 Number 25.

12 (Duncan Deposition Exhibit Number RD-25
13 marked.)

14 Q (By Mr. Ross:) Are you familiar with this
15 document?

16 A Yes. Well, I remember the story.

17 Q Is that -- This look like, at the top, that you
18 were -- excuse me -- the Web site address for this is
19 lubbockonline.com; is that right?

20 A Yes, sir.

21 Q And is it fair to say this is a Tuesday,
22 August 26th, 2014, Lubbock Avalanche-Journal article?

23 A Yes.

24 Q And what is the title of this article? It looks
25 like it might have been cut off a little bit, but --

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1 A Yeah, it's kind of cut off.

2 Q Okay. Is it fair to say that is about the Texas
3 Secretary of State, Nandita Berry, visiting Texas Tech?

4 A And Lubbock Christian University.

5 Q And you said that you recall this visit?

6 A I recall reading about it in the paper.

7 Q Did you ask her to visit?

8 A No.

9 Q Did you speak to her when she visited?

10 A No.

11 Q Do you know why she visited?

12 A For the -- The article would be the best
13 evidence of that --

14 Q Okay.

15 A -- before us today.

16 Q And the article says -- well, can you tell me --
17 let me start over --

18 MR. ROSS: Scratch that. Sorry. Strike
19 that.

20 Q (By Mr. Ross:) It looks like part of the
21 article was cut off a little bit, but is it accurate to
22 say that the article says that the Secretary of State
23 visited Texas Tech and Lubbock Christian University in
24 order to urge students to vote?

25 A I think that's accurate.

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1 Q And do you know -- does the article also make
2 mention of the voter ID law?

3 A Right. Well, it says, "Berry's office holds a
4 neutral stance on any political controversy regarding
5 voter ID" -- something -- "enforcing the law."

6 Q Okay.

7 A I don't know what's cut off here.

8 Q Yeah. Do you know whether -- well, are you
9 familiar with the mobile EIC program?

10 A Mobile what?

11 Q Mobile IEC-issued program, election
12 identification certificate.

13 A No.

14 Q Are you familiar with where someone can get an
15 election identification certificate?

16 A Well, I think at the DPS offices.

17 Q Do you know where the closest DPS office is to
18 Texas Tech University?

19 A Yes. It's out on the -- in the Lubbock
20 Business Park.

21 Q Do you know about how far away that is from
22 Texas Tech?

23 A Probably ten minutes.

24 Q How many miles?

25 A Well, it would be probably 10 or 15 miles --

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1 Q Do you know if there is --

2 A -- if that many. It's pretty close.

3 Q Do you know -- Well, do you know what percentage
4 of the student population at Texas Tech owns a vehicle?

5 A No, I don't.

6 Q Moving on. So it's your understanding that
7 SB 14 requires that photo ID be provided free of charge
8 and made widely available?

9 A I'm sorry?

10 Q Excuse me.

11 A Would you repeat that?

12 Q Is it your understanding that SB 14 requires
13 photo IDs to be provided free of charge and made widely
14 available?

15 A I think that's -- I think that's correct. We
16 can go to the legislation specifically if you would like
17 to.

18 Q But it's your understanding generally on that?

19 A I think so.

20 Q And you're aware of the election identification
21 certificate, correct?

22 A I'm aware of the requirements in the statute,
23 but I would probably want to refresh myself on those, if
24 you ask me questions about them.

25 Q Okay. Well, what is your understanding of what

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1 an election identification certificate is?

2 A Well, let's go to the bill. You can help me,
3 because you've probably looked at it a lot more than I
4 have.

5 Q Go for it.

6 A This is RD-17. I would say -- I'll look for
7 it. I believe, starting at Section 11, it provides
8 notice of identification requirements to voters, and
9 that --

10 Q Well, is it your understanding that the EIC is
11 provided by the Department of Public Safety?

12 A I believe that's my understanding. I believe
13 that's true here. It's Section 20 of the bill.

14 Q Which page are you on? I'm sorry.

15 A Page 13 of the legislation.

16 Q All right. So it says, "The department shall
17 issue an election identification certificate to a person
18 who states that the person" -- excuse me -- "who states
19 that the person is obtaining the certificate for the
20 purpose of satisfying Section 63.0101(b), and does not
21 have another form of identification, described by Section
22 63.0101."

23 A It has several different subsections or --

24 Q Subsections. Right.

25 A -- subparagraphs that deal with the details of

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1 that.

2 Q But it's your general understanding that the
3 election identification certificate is provided by the
4 Department of Public Safety, right?

5 A Yes.

6 Q And are you aware of -- well, excuse me. At the
7 time that SB 14 was being considered, did you know that
8 80 counties did not have DPS offices, 80 Texas counties?

9 A I know that there was -- I recall testimony
10 that there was some concern that there were not -- that
11 every county didn't have a full-time active DPS presence
12 with regard to licensing persons.

13 Q And did you have concerns regarding the lack of
14 the DPS in the 80 counties in Texas at the time?

15 A Well, let me tell you --

16 MR. SWEETEN: Objection; legislative
17 privilege.

18 A I thought it was an issue that we should try to
19 address, because we went through the process.

20 Q (By Mr. Ross:) Do you believe SB 14 addresses
21 those concerns?

22 A I believe other initiatives do. I think we
23 have worked hard to try to get more driver's licenses --
24 to do more -- we've tried to fill in those gaps more.

25 Q Do you know if SB 14 requires additional DPS

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1 offices?

2 MR. SWEETEN: The bill itself?

3 MR. ROSS: Yes.

4 A I don't think it required more. I think that
5 we made a conscious effort to improve the availability of
6 the driver's license process in different counties in
7 rural counties.

8 Q (By Mr. Ross:) But the bill itself did not
9 require it?

10 A The bill did not require it, but, obviously, I
11 think we heard those issues and started trying to address
12 them.

13 Q Okay. Are you aware of the mobile election
14 identification certificate program?

15 A Only that I've heard about it, but I haven't
16 studied it or touched it, felt it, you know, been
17 thoroughly briefed on it.

18 Q Do you know if that was required by SB 14?

19 A I don't know that it was required by SB 14,
20 but it was done.

21 Q It was done in response to SB 14?

22 A It was done in response to and a need for
23 more accessibility for that sort of processing in rural
24 areas.

25 Q And do you know whether that was done after

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1 SB 14 was passed or those --

2 A Yes, it was.

3 Q -- those plans -- after it was signed into law?

4 A Right.

5 Q What's the demographic makeup of your district?

6 A It varies. You know, I've had -- since we
7 began the voter ID, I've had two different districts. I
8 would say, roughly, the district is at least 30 percent
9 Hispanic and probably between 55 and 60 percent,
10 somewhere in that range, of Anglo, and the other is
11 African-American and other.

12 Q How much are African-American?

13 A Less than 10 percent or in that area,
14 African-American or other ethnic groups.

15 Q So probably about 35 percent nonwhite, is that
16 fair, nonwhite, non-Anglo?

17 A Well, 40 to 45 percent.

18 Q Forty to 45 percent Latino, black, and other?

19 A Roughly. These are real guesses here.

20 Q No. Fair enough.

21 A But it's familiarity. I was always out in the
22 district quite a bit, and so that would be my sense. And
23 I think, at some point in time, we've looked at that and
24 made sure that we understand the demographics.

25 Q Is it fair to say that your black and Latino

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1 constituents were important to you?

2 A They sure are, or still were, and still are, I
3 guess, but yes.

4 Q So you had earlier testified that it would be
5 problematic if people were using voter registration cards
6 illegally then; is that right?

7 A Right.

8 Q It's hard to see on the registration cards?

9 A Right.

10 Q Would it be problematic to you if
11 African-Americans were unable to vote, valid
12 African-American voters were unable to vote because of
13 SB 14?

14 A I would not reach the conclusion that they were
15 unable to vote because of Senate Bill 14, because Senate
16 Bill 14 provides mechanisms to allow that to occur. In
17 my experience -- let me rephrase that. I'll stop there.

18 I do not believe that Senate Bill 14
19 would restrict their right to vote.

20 Q Well, let me back up. Would it be problematic
21 if SB 14 diminished the Latinos being able to vote?

22 A I would disagree with the proposition that
23 Senate Bill 14 diminishes the right of anyone to vote in
24 the State of Texas.

25 Q What is your factual basis for that?

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1 A Well, --

2 MR. SWEETEN: Objection; legislative
3 privilege.

4 A Well, common sense. I'm familiar with the law.
5 Most -- to function in the society today, people have a
6 need for IDs. The bill provides a free ID for those who,
7 for whatever reason, don't have one.

8 And so it allows a way, and we've worked
9 to try to make sure that there are available DPS places
10 to -- making sure that that happens. There have been
11 two elections, I guess now, where voter ID will actually
12 occur -- or was used, and we're fixing to have another
13 one here in this district, in my district, on September
14 the 9th.

15 I haven't heard any significant issues;
16 that people were denied the right to vote. I think
17 there were some issues with regard to married names and
18 maiden names and things like that, but I think those
19 were resolved.

20 So I haven't heard the -- it's like a lot
21 of things. I haven't heard the -- I haven't seen in the
22 news that there is a substantial, significant, if any,
23 issue or problem caused by the requirements of Senate
24 Bill 14.

25 Q Do you know how many provisional ballots did not

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1 get counted in the last two elections --

2 A No.

3 Q -- because of SB 14, because someone did not
4 provide a photo ID?

5 A I don't know that.

6 Q Do you have any factual basis for your -- other
7 than news reports, that people were not allowed to vote in
8 this last election?

9 A That's my basis for that.

10 Q Just news reports or the lack of news reports?

11 A Well, the lack of -- you know, I was a member
12 of the Senate until July the 3rd, and I certainly didn't
13 hear any complaints. I'm not aware of any complaints in
14 our district that were -- that were coming into our
15 office.

16 And I've had an Hispanic -- a very
17 active, robust Hispanic community and African-American
18 community, especially in Lubbock. And I haven't really
19 heard complaints. At least no one complained to me.

20 Q Do you know whether your constituents -- or
21 Latino constituents, did they raise any concerns to you
22 that SB 14, prior to its passing, disenfranchised Latino
23 voters?

24 A I do not recall. If they did, that was
25 something that -- there may have been some written

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1 communication that I do not recall today, but I do not
2 recall getting addressed verbally about that issue.

3 Q Do you recall African-American voters bringing
4 that issue to your attention?

5 A No.

6 Q At any time, since the passage of SB 14, have
7 you come to believe that SB 14 has a disproportionate
8 impact on the voters as compared to the Anglo voters?

9 A I have not.

10 Q Was SB 14 enacted, in part, to reduce Latino
11 voter participation?

12 A No, it was not.

13 Q Was it enacted to reduce African-American voter
14 participation?

15 A No, it was not.

16 Q Let me ask you about Texas v. Holder. Are you
17 familiar with that decision from 2012?

18 A There's so many Texas v. Holders.

19 Q From 2012, the case in which SB 14 was denied
20 judicial preclearance under Section 5 of the Voting Rights
21 Act --

22 A I recall reading that. Yes.

23 Q -- did you read that decision?

24 A I think I probably did.

25 Q How did you react to that?

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1 A I disagreed with it.

2 Q Why did you disagree with it?

3 A Well, because I was there. I mean, I believe
4 we provided fair process. We heard the evidence. And I
5 was never convinced that there was any sort of -- that
6 Senate Bill 14 -- I was very clear. I said it earlier.

7 I don't believe the provisions of this
8 bill denied anybody, Anglo, Hispanic, African-American,
9 the right to vote. They provide a process for doing
10 that, just like voter registration. You know, the
11 voter -- everyone has to go register to vote, and
12 everyone now, you know, needs to have an ID.

13 And these are just requirements that we
14 had to protect the integrity of the ballot box. And
15 that's the sole purpose of this bill, and that's why I
16 supported it and voted for it.

17 Q Do you know how the Senate, as a whole, reacted
18 to the Texas v. Holder decision?

19 A No.

20 Q Do you recall?

21 A No.

22 Q Do you know -- Did you take any action to
23 address the Texas v. Holder decision?

24 A What?

25 Q Did you take any action to address the Texas v.

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1 Holder position in the Senate?

2 A No. I don't think we've done anything. I
3 think, shortly thereafter, the Supreme Court took action,
4 but as far as -- not on Section 5 of the Voting Rights
5 Act. So I think that that issue became moot.

6 Q Well, in the time between -- I believe you're
7 referring to --

8 A The legal issue.

9 Q -- Shelby County versus Holder; is that correct?

10 A Yes, sir.

11 Q Are you aware that an election took place
12 between the three-judge panel's decision denying
13 preclearance on SB 14 in 2014 and the Shelby County
14 decision in June of 2013?

15 A The timeline is getting a little fuzzy to me
16 here. So I am not following that. So you might
17 rephrase.

18 Q Well --

19 MR. SWEETEN: It's really hard to hear.
20 I'm sorry.

21 MR. ROSS: This is rain right above you.

22 Q (By Mr. Ross:) I'm sorry.

23 (Off the record discussion ensued.)

24 Q (By Mr. Ross:) SB 14, to your understanding, do
25 you know whether Texas v. Holder -- when the decision came

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1 down?

2 A No.

3 Q Would it be accurate if I -- or would it be
4 accurate to say that it occurred prior to the November of
5 2012 Presidential election, to your knowledge?

6 A I don't remember. I don't have a good timeline
7 on it. I guess that's why I'm not following your
8 question, because I don't have my own timeline as to the
9 dates.

10 Q You don't recall when that decision was issued?

11 A I don't recall.

12 Q I will submit that it was August of 2012.

13 A Okay.

14 Q How many times did the Legislature meet after --
15 well, sorry.

16 How many times did the Legislature meet
17 after August 2012?

18 A We met in the regular session within 2013, and
19 then we met in a -- I think we had two-special sessions
20 in June of 2013 that I'm aware of.

21 Q Are you aware of any committee hearings held
22 related to voter ID after Texas v. Holder was issued?

23 A I don't think we did. I'm not -- I don't
24 remember any. It was in the Senate.

25 Q Did you seek any analysis after Texas v. Holder

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1 to address the concerns raised in that opinion?

2 A No.

3 Q Do you know if there were any reports created by
4 that in the Senate?

5 A I do not know.

6 Q Were there any reports requested or considered
7 by your office?

8 A I don't believe so.

9 Q Do you know if there was any communication
10 between yourself and other senators regarding Texas v.
11 Holder?

12 MR. SWEETEN: Objection; legislative
13 privilege.

14 A I'm not -- I don't recall any, but -- you know,
15 I don't recall. It was not an issue that we were -- at
16 least that I was involved in, because I don't believe
17 there was any legislation submitted to the State Affairs
18 Committee on that issue or any other committee.

19 Q (By Mr. Ross:) Do you recall any conversations
20 between you and other senators about Texas v. Holder?

21 A No, no, not -- no.

22 Q Do you recall -- well, in your request for
23 opponents of the bill, did you request any analysis?

24 A I don't know. That's a good question. I don't
25 know. I do not know. I'm not aware of any, and there

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1 may be. I don't know if there was or not.

2 Q So, earlier, you testified you're familiar with
3 the Supreme Court case of Shelby County v. Holder?

4 A Yes.

5 Q Do you recall when that decision came down?

6 A No.

7 Q I will submit that it was June 2013. Does that
8 sound about right to you?

9 A It doesn't -- I don't have a timeline on it.

10 Q Okay. Did you read that decision?

11 A You know, I didn't -- it was long, and I don't
12 think I read -- I read the syllabus, probably. I didn't
13 read the whole opinion.

14 Q And are you aware that that decision suspended
15 preclearance under Section 5?

16 A That's what I'm aware of.

17 Q Okay. Were there any interim session committees
18 convened between August 2013 and June -- or excuse me --
19 August of 2012 and June of 2013 to address SB 14 or voter
20 ID, that you're aware of?

21 A I'm not aware of any.

22 Q Okay.

23 A I don't know for sure about that. I think -- I
24 don't believe there was any charged to the committee to
25 do that.

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1 Q Okay. And you were still in the Senate at that
2 time; is that right?

3 A Right.

4 Q And you were still the chair of the --

5 A Right. We typically studied issues when they
6 were charged to us from the Lieutenant Governor's office.
7 And I don't believe that there was an interim charge
8 between '11 and '13, 2011 and 2013, to do a voter ID
9 study.

10 But you could refresh my memory. There
11 may have been something, and I just don't recall it.

12 Q But you do not recall -- well, I'm submitting
13 that between Texas v. Holder and Shelby County v. Holder,
14 there was the 2012 Presidential election.

15 Does that -- I'm submitting that that's
16 true, based on the dates --

17 A Well, remind me --

18 Q -- of the decisions.

19 A I guess that's correct.

20 Q In August 2012, the Texas v. Holder --

21 A I'm going to be in layman's mode here, and you
22 can tell me this --

23 Q Sure.

24 A -- and maybe we will understand each other
25 better.

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1 Q Sure.

2 A I do not -- Voter ID was in the last
3 Presidential election. Texas did not use the voter ID
4 statute; is that correct?

5 Q Yes, because of Texas v. Holder.

6 A Right.

7 Q Yes.

8 A But, after that, we've had a primary season,
9 and I think a Constitutional amendment election, I
10 believe, where the voter ID was implemented.

11 Q Yes, that's my understanding.

12 A Post-Holder and Shelby County.

13 Q Yes.

14 A That's my timeline on it.

15 Q Yes. And that's the correct timeline. We're
16 understanding each other.

17 Were there any efforts made on the part of
18 the Legislature to hold hearings or task force to
19 otherwise examine the administration of the 2014
20 election?

21 A I don't know.

22 Q Do you recall?

23 A I don't recall any. I don't believe we were
24 charged with that. We've been a little bit -- We've had
25 elections going on in the State, as well.

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1 After 2013, we began kind of a
2 generational aspect in our legislative process, where
3 you had a Governor announcing that he wasn't going to
4 run. So we've had a lot of different election issues
5 going on, not related to voter ID, that has delayed the
6 interim process of the Senate.

7 So I think that's one reason why you
8 haven't seen a lot of -- you haven't seen priorities set
9 on any issues at this point in time.

10 Q Okay.

11 A And there's some uncertainty as to where the
12 leadership is.

13 Q Are you aware of any in-person voter
14 impersonation that occurred in Texas during the 2012
15 Presidential election?

16 A I'm not -- I can't give you a personal -- no,
17 I'm not aware of any specific anecdotal evidence on that.

18 Q Are you aware of any in-personal voter
19 impersonation that occurred in Texas during any election
20 between August 2012 and November 2013?

21 A I'll stick with my former testimony. I don't
22 know how you could prove it unless you just had, you
23 know, some sort of super effort that, in and of itself,
24 would be oppressive, to try to shake down people every
25 time that they came to vote.

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1 The only way to avoid that kind of, what
2 I would call, oppressive enforcement is just to simply
3 say, "Present your ID." And that's what Senate Bill 14
4 does. And it provides processes. If you don't have an
5 ID, the State of Texas will give you one for free.

6 So, to me, in my legislative and
7 political judgment, that was an appropriate policy
8 decision laid out in Senate Bill 14.

9 Q Okay. As of June 26th, 2013, Texas has enforced
10 SB 14; is that correct? As of June 26th, 2013, SB 14 has
11 been in effect; is that your understanding?

12 A Post-Shelby County?

13 Q Yes.

14 A Yes, sir.

15 Q Okay. Immediately after the Shelby County
16 decision, the Texas Attorney General announced that he
17 would begin enforcing SB 14 immediately. Do you recall
18 hearing that?

19 A I recall reading it in the newspaper.

20 Q Did you have any communication with him about
21 that?

22 A No.

23 Q Did you have any communication with anyone about
24 that announcement?

25 A No.

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1 Q Is it your understanding, then, that SB 14 is
2 now being enforced?

3 A Yes.

4 Q Are you aware of what documents you need to
5 produce in order to obtain an election identification
6 certificate?

7 A It's stated in the legislation. We can look it
8 up.

9 Q Well, let's pull -- go back to SB 14. Let's do
10 this then.

11 MR. ROSS: We might take a quick break.

12 Q (By Mr. Ross:) So I'll submit that you're
13 required -- well, let me say: Is it your understanding
14 that you're required to present a birth certificate in
15 order to get an election identification certificate?

16 A (Witness reviewing document.) I'm reading the
17 statute. So it's okay. I may not be able to --

18 Q Well, do you know?

19 A It's probably not in the bill. I think there's
20 another -- there's another statutory reference here that,
21 I think, cross-references it. I don't think it's
22 actually included in the bill.

23 Q Well, do you know whether SB 14 requires the
24 documents needed to show -- to get an election -- excuse
25 me --

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1 MR. ROSS: Strike that.

2 Q (By Mr. Ross:) Do you know whether SB 14
3 requires that the underlying documents that one would need
4 to show, in order to get an election identification
5 certificate, be provided for free?

6 A I don't believe it does. I believe it provides
7 that the certificate, though, must be provided for free.

8 Q Okay. Do you know whether there were any
9 amendments offered to require that?

10 A Yes. I believe there was. In reviewing the
11 testimony -- reviewing something that you showed me -- I
12 think that the other Counsel showed me today -- I saw an
13 amendment by, I think, Davis that covered that.

14 Q Do you recall how you voted on that amendment?

15 A I think I recall, from that document, that I
16 voted either to table or in opposition.

17 Q And do you recall why?

18 MR. SWEETEN: Objection; legislative
19 privilege.

20 A No, I really don't, other than -- you know, I
21 guess we can reconstruct it -- the counties, I think,
22 basically, are charged with those vital statistics or the
23 local health departments. I'm not sure exactly how
24 complex that would be, to be able to provide those.

25 So it might be fleshed out to understand

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1 whether or not it worked -- or whether we even had
2 jurisdiction to mandate that. So there was some
3 confusion in my mind about how that would really work.
4 And so that was one of the reason I would have voted
5 against that.

6 Q (By Mr. Ross:) Do you have any concern about --
7 in order to get an EIC -- requiring an underlying
8 document, but not making the underlying document free --
9 would prevent voters from obtaining that form of ID?

10 A I heard those concerns in the testimony, and I
11 weighed them. And, in fact, to me, the weight was not
12 sufficient to cause me to have judgment against the bill.

13 Q Do you recall -- if we move to --

14 MR. ROSS: Well, let me take a break here.

15 (Short break taken.)

16 MR. ROSS: So we're back on the record. I
17 think I just have a couple of more questions, and we'll
18 let you-all go.

19 Q (By Mr. Ross:) Thank you, Senator, again, --

20 A Sure.

21 Q -- for taking the time to do this one more time.
22 So you said you were familiar with Texas v. Holder, right;
23 that you had read the opinion?

24 A Yeah, I read it one time.

25 Q Okay. Do you recall -- Well, would it bother

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1 you to learn that some voters had to travel between 150 --
2 or 150 miles round trip in order to obtain an SB 14 ID?

3 A You know, I think there's nothing we can do
4 that's ever perfect. I do think that we've tried to
5 address that issue.

6 I know I even had legislation in the last
7 session, I think, to work some issues out with Senator
8 Nichols and others to try to make sure that we had more
9 processing and accessibility in the rural areas. I
10 think that Representative King was big on that, as well,
11 up in the Panhandle.

12 And so, you know, you can't solve every
13 problem that a piece of legislation presents, but when
14 you're recognizing -- when you start trying to address
15 them, and I think we have, I don't think that it's --
16 you know, in my view, we did work to try to address
17 those issues.

18 Q Do you think it would be burdensome for someone
19 to have to drive 100 miles in order to get SB 14 required
20 ID.

21 MR. SWEETEN: Objection, foundation;
22 assumes facts not in evidence. You can answer.

23 A You know, I don't want to venture -- if someone
24 has to drive 100 miles to get an ID, they probably have
25 to drive 100 miles to shop, as well.

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1 So, generally, I don't know that it's --
2 that it would be burdensome if it's 150 miles. If you
3 live 150 miles -- if you live in rural remote areas,
4 you're used to driving 150 miles. I grew up in a rural
5 area. So driving 150 in West Texas is not -- most
6 people don't consider that over the top or a long way.

7 Q (By Mr. Ross:) Well, --

8 A I say most people. Those of us out here are
9 used to driving 150 miles. They may not true in New
10 York. That may sound like a long way, but in West Texas,
11 we're -- you know, we do that, and, you know, you
12 would -- but, again, we've tried -- we've made efforts
13 for those of us who live in rural counties.

14 And I've represented rural counties for
15 28 years -- 20 years in the Legislature, and we've tried
16 to make -- we always try to address those issues and
17 make sure that we improve them, and I think we have.

18 Q Would it be burdensome, if someone did not
19 have a car, to drive 100 miles in order to get to a DPS
20 office --

21 MR. SWEETEN: Same objection.

22 Q (By Mr. Ross:) -- with SB 14 required ID?

23 MR. SWEETEN: Objection.

24 A It depends on each individual case. I don't
25 think you can say a blanket statement in the deposition

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1 at the seventh hour --

2 Q (By Mr. Ross:) Fair enough.

3 A -- that it would be burdensome or not. It
4 would just depend on each individual case.

5 Q Okay.

6 MR. ROSS: I think that's it.

7 MR. SWEETEN: No questions. Thank you.

8 MR. ROSS: Thank you very much.

9 (Deposition concluded.)

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SENATOR DUNCAN - AUGUST 28, 2014

1 STATE OF TEXAS

2 COUNTY OF LUBBOCK

3 REPORTER'S CERTIFICATE


4 ORAL DEPOSITION OF SENATOR ROBERT L. DUNCAN

5 AUGUST 28, 2014

6 I, the undersigned Certified Shorthand Reporter for
7 the States of Texas and New Mexico and Registered
8 Professional Reporter, certify that the facts stated in
9 the foregoing pages are true and correct.

10 I further certify that I am neither attorney or
11 counsel for, related to, nor employed by any parties to
12 the action in which this testimony is taken and, further,
13 that I am not a relative or employee of any counsel
14 employed by the parties hereto or financially interested
15 in the action.

16 SUBSCRIBED AND SWORN TO under my hand and seal of
17 office on this the 31st day of August, 2014.

18
19 
20 Susan Myatt, CSR
21 Texas CSR #3927
22 Expiration: 12/31/15
23 CAPROCK COURT REPORTING
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25 U. S. Legal Support
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